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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on measures to reduce the cost of deploying high-speed electronic communications networks

(Text with EEA relevance)

{SWD(2013) 73 final}
{SWD(2013) 74 final}

EXPLANATORY MEMORANDUM

This explanatory memorandum presents the proposal for a Regulation of the European Parliament and of the Council on measures to reduce the cost of deploying high-speed electronic communications networks.

1. CONTEXT OF THE PROPOSAL

1.1. Objectives of the Proposal

The objectives of the proposed Regulation are to reduce the cost and enhance the efficiency of deploying high-speed electronic communications infrastructure by scaling up existing best practices across the EU, thus improving the conditions for the establishment and functioning of the internal market in an area supporting the development of virtually all sectors of the economy.

In fact it is widely agreed that civil engineering works constitute the dominant part in overall network deployment costs[1], regardless of the technology used, with estimates as high as 80% for certain technologies.

Providing a number of directly applicable rights and obligations applicable across the various steps of infrastructure deployment can lead to significant cost reductions. Barriers to investment and market entry can be lowered by allowing for more intensive usage of existing physical infrastructures, enhanced cooperation on planned civil works, streamlining permit granting procedures and by removing obstacles to high-speed-ready in-building infrastructure.

This initiative therefore addresses four main problem areas: (1) inefficiencies or bottlenecks concerning the use of existing physical infrastructure (such as, for example, ducts, conduits, manholes, cabinets, poles, masts, antennae, towers and other supporting constructions), (2) bottlenecks related to co-deployment, (3) inefficiencies regarding administrative permit granting, and, finally (4) bottlenecks concerning in-building deployment.

As each problem area is linked to a specific step in the rollout process, tackling these problems areas together will result in a set of coherent and mutually reinforcing actions. A study estimates that if measures were taken to address the identified set of problem areas, the potential Capex savings to operators are in the range of 20–30% of total investment costs[2], i.e. up to 63 billion €by 2020[3].

In order to maximise synergies across networks, the regulation is addressed not only to electronic communications network providers but to any owner of physical infrastructures, such as electricity, gas, water and sewage, heating and transport services, suitable to host electronic communications network elements,

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1 Analysys Mason, 2008, Analysys Mason 2012, WIK, 2008

2 Analysys Mason, 2012, The estimation is based on the following assumptions: 25% of the deployment is in existing ducts, saving 75% in Capex for this part, 10% of the deployment connects the network to new housing developments, and co-deployment with other operators/utility companies is used, saving 15–60%, and 5% of the deployment connects the network to pre-wired multi-dwelling units, saving 20–60%. In addition, there will also be social, environmental, and economic benefits.

3 The estimate is based on an investment scenario calculated as part of an extensive study by Analysys Mason and Tech4i2 ("The socio-economic impact of bandwidth", 2013). This study forecasts that the broadband DAE targets would be reached only under a major intervention scenario, namely 211 billion euro of NGA investment. In order to obtain potential savings, the indicated percentages were applied to his amount.

1.2. General context

According to the 2010 report on the Single Market,[4] telecommunications services and infrastructures in the EU are still highly fragmented along national borders. A more recent report on the cost of non-Europe in the electronic communications sector[5] has shown that the untapped potential of the Single Market corresponds to a yearly amount of 0.9% GDP, or 110 billion euros.

High-speed broadband infrastructure is the backbone of the Digital Single Market and a precondition for worldwide competitiveness, i.a. in the field of e-Commerce. As recalled in the Single Market Act II Communication,[6] a 10% increase in broadband penetration can result in a 1-1,5 % increase in the GDP annually and 1,5% labour productivity gains,[7] and broadband-induced innovation in companies creates employment and has the potential to generate 2 million extra jobs by 2020.[8]

A significant fraction of this untapped potential can be found at the level of network infrastructures: different regulatory approaches to network roll-out increase the cost of access to national markets, prevent the exploitation of economies of scale at services and equipment level and hinder the development of innovative services which could emerge on very high-speed networks running in a seamless fashion across borders. While the deployment of access networks often involves provisions and procedures administered at local level, such measures, including local secondary legislation may indirectly affect the freedom to provide services and justify Union intervention[9]. Furthermore, based on Article 114 of the TFEU, the Union has previously legislated, in order to foster local network infrastructure deployment, through unbundling of the local loop[10]

The Union cannot afford to leave citizens and businesses outside the footprint of such infrastructures and has subscribed to ambitious broadband targets of the Digital Agenda for Europe: by 2013, basic broadband for all Europeans, and by 2020, (i) access to speeds of above 30 Mbps for all Europeans, and (ii) subscription of internet connection above 100 Mbps for 50% or more of European households. These goals will only be achieved if the infrastructure deployment costs are lowered across the EU.

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4 A new Strategy for the Single Market, report by Mario Monti to the President of the European Commission, 9 May 2010

5 Steps towards a truly Internal Market for e-communications in the run-up to 2020, Ecorys, TU Delft and TNO, released on February 2012

6 (COM (2012) 573)

7 Booz and Company, Maximising the impact of Digitalisation, 2012

8 Commission estimate based on national studies (Liebenau, J., Atkinson, R., Karrberg, P., Castro, D. and Ezell, S., 2009, *The UK Digital Road to Recovery*; Katz R.L. et al , 2009, *The Impact of Broadband on Jobs and the German Economy*).

9 The Court of Justice reminded in *De Coster* (C-17/00, [2001] Rec. p. I-9445, n° 37) that any local secondary legislation affecting the freedom to provide services must comply with the principle of proportionality. On the same instance of satellite dishes, the Commission underlined in its Communication on the general application of the principles of free movement of goods and services – Articles 28 and 49 – concerning the use of satellite dishes (COM(2001) 351 final), that although each Member State is responsible for setting the conditions which must be met within its internal legal system for installing and using satellite dishes, some national regulations may nonetheless affect what can be received. Thus, indirectly, they affect distribution of the wide range of services transmitted by satellite – which, by their very nature, cross borders – such as television and radio broadcasts, together with interactive services ("information society services"). Such national measures must therefore comply with the fundamental principles of the Treaty, such as the free movement of goods and the freedom to provide services within the Single Market.

10 Regulation (EC) n° 2887/2000 of the European Parliament and of the Council of 18 December 2000 on unbundled access to the local loop, OJ, 30.12.2000, L336/4.

1.3. Political background

The Digital Agenda for Europe is a flagship initiative under the Europe 2020 Strategy aimed at delivering sustainable economic and social benefits from a digital single market based on fast and ultra-fast Internet and interoperable applications.

It identified in particular the need to lower the costs of broadband deployment in the entire Union territory, including by achieving proper planning and coordination and by reducing administrative burdens.[11]

The European Council of 1 and 2 March 2012 called for action at the Union level to provide better broadband coverage, including by reducing the cost of high-speed broadband infrastructure.[12]

The Communication "Single Market Act II: Together for new growth" identified the initiative as one of 12 key actions that will boost growth, employment and confidence in the Single Market and generate real effects on the ground[13]. In the Single Market Act II, adoption of the Commission proposal is foreseen for the first quarter of 2013. The European Council of 13 and 14 December 2012 called on the Commission to present all key proposals by the spring of 2013.[14]

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENT

2.1. Public consultation of interested parties

The Commission services held a public consultation from 27 April to 20 July 2012, inviting interested parties to give their views on five sets of questions, covering the entire chain of network deployment, from the planning phase to the connection of end-users.[15]

Over a hundred written replies were submitted by different types of stakeholders from 26 countries across the EU and EFTA. The largest categories of respondents were electronic communications providers (27) and their trade associations (14) as well as public bodies, including central (22, including 6 National Regulatory Authorities (NRAs)) and local authorities (9). Other utilities (7) provided their input mainly via trade associations. Equipment manufacturers (5) and engineering and ICT trade associations (6) also replied.

In general terms, the respondents favourably received the Commission's intention for an initiative to address civil engineering costs for broadband roll-out across the single market. A majority of the respondents confirmed existing inefficiencies and bottlenecks as well as the potential for cost reduction. The existence of problems and the need for action were clearly admitted by stakeholders. Several solutions were proposed, some very ambitious and some more moderate.

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11 A Digital Agenda for Europe, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2010)245 of 19.5.2010, in particular section 2.4.1.

12 Conclusions of the European Council of 1/2 March 2012, EUCO 4/2/12, http://register.consilium.europa.eu/pdf/en/12/st00/st00004-re02.en12.pdf, item 15.

13 Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, COM(2012)573 of 3.10.2012, Key Action 9.

14 Conclusions of the European Council of 13/14 December 2012, EUCO 205/12, http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/134353.pdf, item 17.

15 A report on the outcome of the public consultation can be found as part of the Impact Assessment Report that is attached to this proposal (Annex I to the Report).

In addition to the public consultation, the Commission services established an Internet discussion platform for crowdsourcing ideas of interested parties.[16]

The Commission services have maintained regular contacts with major stakeholders, both public and private, across the sectors concerned.

2.2 Studies and other sources of information

The Commission services commissioned two studies, respectively, by Deloitte on cost reduction practices with regard to broadband passive infrastructure roll-out,[17] and by Analysys Mason to support an impact assessment to accompany the present proposal.[18]

Furthermore, the Commission services drew upon additional information sources, studies and national best practices (including of Germany, Spain, France, Italy, Lithuania, The Netherlands, Poland, Portugal, Slovenia, Sweden and United Kingdom)[19]. Detailed information was also collected by the responsible Commission services via the National Regulatory Authorities.

2.3 Assessment of the impact of the proposed Regulation

The Commission services have carried out an impact assessment.[20] Four policy options were chosen for further analysis:

Option 1: Business as usual: maintaining the current approach of monitoring, enforcement and guidance.

Option 2: Promote efficiency gains within the telecom sector: recommending measures towards a more coherent and harmonised application by National Regulatory Authorities of the regulatory framework for electronic communications.

Option 3: Enable efficiency gains across sectors: proposal for a Regulation aiming at unlocking the potential of cross-sector cooperation (two sub-options, 3a and 3b, foresee, respectively, a Regulation only and a combination of a Regulation and a Recommendation).

Option 4: Mandate efficiency gains: proposal for legislation complementing the current regulatory framework to mandate measures going beyond option 3, such as infrastructure atlases, cost-oriented infrastructure access, mandated cooperation in civil engineering works even when not financed by public means, and installation of high-speed-ready infrastructure also in old buildings.

The analysis of the options focuses in particular on the costs and benefits incurred by direct stakeholders, the expected effects on network investment and broadband rollout, and broader macro-economic analysis of effects on consumer welfare, growth, competitiveness, and the Single Market.

The Impact Assessment Report concludes that option 3a is the best option available, given its effectiveness towards the identified objects, costs-benefits analysis, efficiency and coherence

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16 See http://daa.ec.europa.eu/content/special/crowdsourcing.

17 A Report that builds on the study prepared by Deloitte, as further cross-checked with other sources, can be found as part of the Impact Assessment Report that is attached to this proposal (Annex II to the Report).

18 This Report can be found as part of the Impact Assessment Report that is attached to this proposal (Annex III to the Report).

19 A complete list of these sources can be found in the bibliography of the Impact Assessment Report.

20 The Impact Assessment Report is attached to this proposal.

of exploiting the cost reduction potential with general EU policy objectives, in accordance with proportionality and subsidiarity principles.

For the choice of the proposed instrument, see section 3.4, below.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Legal basis

The proposal is based on Article 114 of the Treaty on the Functioning of the European Union. This is justified by the objectives of the proposal, which seek to improve the conditions for the establishment and functioning of the internal market.

Furthermore, as confirmed by case law, this article confers on the legislature of the Union the discretion, depending on the general context and the specific circumstances of the matter to be harmonised, as regards the harmonisation technique most appropriate for achieving the desired result, in particular in fields that are characterised by complex technical features.[21]

3.2. Subsidiarity

The proposed European intervention to reduce the cost of deploying high-speed electronic communications infrastructure is justified by the subsidiarity principle.

The subsidiarity principle pursues two aims. On the one hand, it allows the Union to act if a problem cannot be adequately settled by the Member States acting on their own. On the other hand, it seeks to uphold the authority of the Member States in those areas that cannot be dealt with more effectively by Union action. The purpose is to bring decision-making within the Union as close to the citizen as possible.

The proposed Regulation focuses on the definition of specific directly applicable rights and obligations in order to facilitate the planning and execution of physical infrastructure rollout and civil works, including ancillary provisions to ensure transparency of relevant information and coordination of administrative procedures. In addition to this, it provides requirements for in-building physical infrastructure for new buildings and major renovations.

The envisaged measures build on existing best practice in several Member States, such as those concerning the re-use of existing physical infrastructures in Lithuania and Portugal, transparency of existing infrastructure in Belgium and Germany, co-deployment in Finland and Sweden, the streamlining of rights of way and administrative procedures in the Netherlands and Poland, and high-speed broadband infrastructure in new buildings in Spain and France[22]. Some Member States have introduced measures that to some extent go even beyond the ones proposed, such as the one-stop-shop in Greece. The proposed Regulation is without prejudice to such more detailed provisions set out by national law.

The proposed Regulation is also without prejudice to any specific regulatory measure, including the imposition of remedies on undertakings having significant market power, taken by the national regulatory authorities under the Union regulatory framework for electronic communications.

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21 See Case C-66/04, paragraph 45, and Case C-217/04, paragraph 43.

22 See Analysys Mason, Final report for the DG Information Society and Media, European Commission Support for the preparation of an impact assessment to accompany an EU initiative on reducing the costs of high-speed broadband infrastructure deployment (SMART 2012/0013)

The proposed measures are necessary at the level of the Union to improve the conditions for the establishment and functioning of the internal market, in order to:

– remove barriers to the functioning of the Single Market caused by the patchwork of rules and administrative practices at national and sub-national levels, which impedes the development and growth of European companies, has a negative impact on European competitiveness, and creates barriers to invest and operate cross-border, and thus obstructs the freedom to provide electronic communications services and networks as guaranteed under existing Union legislation. As an illustration, scattered and non-transparent regulatory approaches to network rollout increase the cost of access to each national market. Such fragmentation constitutes an obstacle for multinational companies as well as national companies, willing to reach economies of scale at European level in the face of increasingly global competition. It also hinders the development of innovative services which could emerge on very high-speed networks running in a seamless fashion across borders.

– stimulate ubiquitous broadband coverage, which is a pre-condition for the development of the Digital Single Market, thus contributing to the removal of an important obstacle to the completion of the Single Market while at the same time contributing to territorial cohesion. These goals will only be achieved if the infrastructure deployment costs are lowered across the EU;

– turn into reality the significant untapped potential of cost-reduction and facilitation of broadband rollout, including by scaling up existing best practices across the EU whenever available.

– streamline the efficient planning and investment processes on a large scale, thus facilitating the development of pan-European operators.

– ensure equal treatment and non-discrimination of undertakings as well as of investors, in line with "those objectives and tasks closely linked to the subject-matter"[23] of several instruments already provided for in the EU law, in particular concerning the electronic communications sector[24] but also concerning other sectors (e.g. utility companies seeking to make profit from their physical infrastructure, synergies in setting up smart grids).

Several arrangements have been made for this proposal to comply with the principle of subsidiarity.

– Firstly, Member States may maintain or adopt more detailed provisions further specifying or complementing the obligations provided for in the proposed Regulation, e.g. with regard to access to existing infrastructures, coordination of civil works and co-deployment.

– Moreover, while the tasks created by the proposed Regulation are assigned by default to the independent NRA under the electronic communications regulatory framework, in view of its expertise and independence, Member States may appoint different competent bodies in accordance with the domestic constitutional system of attribution of competences and powers[25], at an optimal level of aggregation, where valuable efficiencies may be ensured in view of the tasks assigned. This applies to all

[23] See Case C-217/04 paragraph 47.

[24] See for example Recital 8 of the Better Regulation Directive 2009/140/EC, Recital 22 of the Framework Directive, Recital 1 and 4 of Regulation 2887/2000/EC.

[25] See Case 272/83 paragraphs 25 and 27.

of the tasks foreseen under the regulation: the information point on permit granting, transparency and dispute resolution.

– Secondly, with regard to transparency of existing physical infrastructure, while a number of Member States have put in place different mapping initiatives, in the form of GIS (Geographic Information Systems) applications covering in some Member States not only the electronic communications infrastructure, but also physical infrastructure of other utilities, this proposal does not require Member States to undertake such a mapping exercise. Neither does it require that data is aggregated or stored at a point of single contact. The obligation imposed upon Member States is to 'make available' such data at a single information point, which could be made by providing hyperlinks to other locations. Similarly, the proposal does not impose any general obligation of pre-notification of planned civil works. It rather enables electronic communications providers to require this information from network providers, in view of deploying high-speed electronic communications networks.

– Thirdly, with regard to permit granting, this proposal does not affect the procedural autonomy of the Member States to allocate competences internally. While information on different permit granting procedures must be available and applications submitted via the contact point, its role is limited to dispatching the different permits and coordinating the permit granting process. Furthermore, the different deadlines are only harmonised by default, while Member States are allowed to keep or introduce their specific deadlines, without prejudice to other specific deadlines or obligations laid down for the proper conduct of the procedure which are applicable in accordance with national or EU law.

– Lastly, with regard to in-building equipment, the proposed regulation allows Member States to adjust the obligations provided by the Regulation to the national and local particularities, by exempting categories of buildings, such as single-dwelling buildings or renovations from its scope of application, in full compliance with the principles of subsidiarity and proportionality.

3.3. Proportionality

The proposed measures are also justified on grounds of proportionality.

The proposed cost reduction measures focus on increasing coordination and transparency, and on harmonising minimum tools, enabling the relevant stakeholders to exploit synergies and reduce inefficiencies in the rollout. Also, while the proposed measures aim at reducing barriers to access to physical infrastructures, they do not unduly impair ownership rights and preserve commercial negotiation in the first place.

The proposed measures do not impose specific business models. They also leave open the possibility for Member States to adopt more detailed provisions, and thus will rather complement than affect on-going national initiatives. In contrast, they will allow Member States to build on their current measures and select the organisation of any existing or new measure which best suits their particularities, without necessarily imposing further costs.

While the proposed regulation affects ownership rights to some extent, this is done in respect of the principle of proportionality.

The proposal enables commercial negotiations for access to the physical infrastructure, without mandating access at pre-defined or cost-oriented terms and conditions. It provides for indicative reasons where the refusal to grant access may be deemed reasonable, such as the technical suitability of the physical infrastructure to which access has been requested to host

any of the elements of electronic communications networks, the lack of availability of space to host the elements, or network integrity and security.

While it provides for dispute resolution in case of unreasonable denial of access, it takes into consideration several parameters in setting the price for access, such as the impact of the requested access on the business plan underpinning the investments made by the network operator, in particular in case of recently built physical infrastructures used for the provision of high-speed electronic communications services.

With regard to transparency of existing physical infrastructure, the proposal concerns infrastructure which is suitable for high-speed network deployment and not any physical infrastructure in general. It also allows Member States to provide for general exemptions for infrastructures which are technically unsuitable. Furthermore, the proposal seeks to make available information at the lowest cost. For this reason, it includes gradual obligations, allowing organising access to already available information and resorting to surveys only when this information is not readily available with public authorities or the electronic communications providers.

Concerning co-ordination of civil engineering works, the proposal does not limit the economic freedom of undertakings – in particular, it does not mandate co-deployment by parties that have not chosen this commercial model, unless publicly financed. On the contrary, it seeks to enable commercial co-deployment arrangements, by enabling a better dissemination of information on future civil engineering works.

With regard to in-building physical infrastructure, the obligation to equip buildings with high-speed-ready physical infrastructure is limited to new and majorly renovated buildings. This is because in these cases the cost is incremental, compared to the high cost of retrofitting existing, unequipped buildings with passive infrastructure and likely to be compensated by the higher value of the asset. Moreover, the proposal further reduces the scope of application of this obligation to major renovations necessitating a building permit. General exemptions by the Member States for proportionality reason are also foreseen.

3.4 Fundamental Rights

The impact on fundamental rights of the proposed measures has been analysed.

While the obligation of network operators to meet all reasonable requests for access to their physical infrastructure could restrict their right to conduct a business as well as their property right, the adverse effect in this respect is however mitigated by the provision that such access should be granted on fair terms and conditions, including price. Furthermore, this limitation must be considered justified and proportionate to the aim of reducing the cost of deploying high-speed electronic communications networks since it would reduce the need to perform civil engineering works, which account for almost 80% of the cost of network deployment. With regard to the obligation on network operators to provide minimum information on existing infrastructures, safeguards as concerns the right to privacy and the protection of business secrets are provided through the provision of exemptions for the purpose of operating and business secrets.

The obligation on undertakings performing civil works fully or partially financed by public means, to meet any reasonable request for access in view of deploying elements of high-speed electronic communications networks, could restrict their right to conduct a business as well as their property right. However, any such obligation would only apply if it would not entail any additional costs for the initially envisaged civil works and if the request to coordinate is filed as soon as possible and in any case at least one month before the submission of the final project to the competent authorities for permit granting. Furthermore, this limitation must be

considered justified and proportionate to the aim of reducing the cost of deploying high-speed electronic communications networks since it would allow electronic communications network operators to cover only part of the cost of the civil engineering works.

The obligation to equip all newly constructed buildings, with a high-speed-ready in-building physical infrastructure could have an impact on the property rights of the owners of the property concerned. This limitation must be considered justified and proportionate to the aim of reducing the cost of deploying high-speed electronic communications networks since it would exclude any need for retrofitting buildings with physical infrastructure.

The right of a provider of public communications networks to terminate its network at the concentration point in view of accessing the high-speed-ready in-building physical infrastructure, could have an impact on the right of property of the owners of private property concerned. Such restrictions are however limited by the obligation on the public communications network providers to minimise the impact on the private property and to cover any costs incurred. Furthermore, this limitation must be considered justified and proportionate to the aim of reducing the cost of deploying high-speed electronic communications networks since it would allow electronic communications operators to achieve economies of scale, when they deploy their networks.

The right of public communications network providers to access any existing high-speed-ready in-building physical infrastructure could affect the property rights of the holder of the right to use the in-building physical infrastructure. This restriction is however limited since such access would have to be granted on reasonable terms and as it would only apply in cases where duplication is technically impossible or economically inefficient.

The right to an effective remedy for the parties concerned by the limitations outlined above are guaranteed by the possibility of referral to a competent national dispute settlement body, which should be without prejudice to the right of any of the parties to refer the case to a court.

3.5. Choice of instrument

The Commission proposes a Regulation as it presents the guarantee of a comprehensive, directly applicable solution, including for all permits necessary to rollout networks. It ensures the rapid availability of cost reduction tools, in keeping with the momentum of the targets in the Digital Agenda for Europe due to be achieved by 2020.

Contrary to a Directive, which would imply granting additional time for transposition by Member States, the regulation will rapidly install the basic rights and obligations for network deployment throughout the single market. Moreover, a directive would by its nature allow a significant degree of differentiation in the implementation of those rights and obligations hence perpetuating the emerging patchwork. In contrast a directly applicable legal instrument will reduce existing and prevent further fragmentation, by focusing on removing a selected number of barriers to the development of a single market for electronic communications networks, building on best practices but leaving organisational issues very much to the discretion of Member States. Providers need to be granted a set of directly applicable rights in relation to all phases of planning and rolling out a network, which they can invoke before the national courts, not only against Member States, but also against other private parties, such as owners of infrastructure.

Having in mind that the core of the proposal is the definition of rights and obligation directly applicable across the Single Market, a Regulation rather than a Directive appears to be the preferable legal instrument since it has clear advantages in terms of efficiency and

effectiveness and creates a level playing field for citizens and business, with greater potential for private enforcement[26]. Accordingly, a directly applicable Regulation, unlike a Directive that requires national transposition, better guarantees the immediate impact needed in order to contribute to the Digital Agenda objectives on broadband availability by 2020.

The considerable advantages of the cost reduction measures, both in terms of economic benefit as in societal advantages, far outweigh any administrative burden.

3.6. Structure of the proposal and main rights and obligations

Article 1 – Objective and scope

– Article 1 specifies the objective and scope of the Regulation.

Article 2 – Definitions

– This Article contains definitions in addition to those contained in the EU regulatory framework for electronic communications.

Article 3 – Access to existing physical infrastructure

– Article 3 establishes a general right of network operators to offer access to their physical infrastructure and an obligation for network operators to meet reasonable requests for access to their physical infrastructure in view of deploying elements of electronic communications networks under fair terms and conditions.

– A dispute settlement body is foreseen to review any refusal or dispute on terms and conditions – this function would be entrusted, by default, to the National Regulatory Authority (NRA).

Article 4 – Transparency of physical infrastructure

– Article 4 provides for a right to access a set of minimum information concerning existing physical infrastructure(s) as well as planned civil works.

– This is accompanied by an obligation for network operators to meet reasonable requests for in-site surveys of specific elements of their physical infrastructure.

– Dispute resolution regarding in-site surveys or access to information would be entrusted to a dispute settlement body, by default the NRA.

Article 5 – Coordination of civil works

– This Article contains a right to negotiate coordination of civil works.

– In addition, it imposes an obligation for undertakings performing civil works financed by public means to meet reasonable requests for civil works coordination agreements on transparent and non-discriminatory terms.

Article 6 – Permit granting

– This Article contains a right to access, by electronic means and via a single information point, any information concerning the conditions and procedures applicable to specific civil works as well as a right to submit applications for permits

[26] European Parliament resolution of 14 June 2012 on "Single Market Act: The Next Steps to Growth" (2012/2663(RSP)), point 10.

by electronic means via that point. The information point facilitates and coordinates the permit granting process and monitors compliance with deadlines.

– In addition it sets a general maximum deadline if a deadline is not provided in national or EU legislation as well as a right to receive a timely decision in relation to applications for permits.

Articles 7-8 – In-building equipment

– Article 7 establishes an obligation to equip new buildings, as well as buildings that undergo extensive renovation, with high-speed-ready in-building physical infrastructure, and an obligation to provide new multi-dwelling buildings, as well as old ones that undergo extensive renovation, with a concentration point located in or outside the building.

– Article 8 constitutes a right for electronic communications network providers to terminate their network equipment at the concentration point of buildings, a right for electronic communication operators to negotiate access to any existing high-speed-ready in-building physical infrastructure and, in the absence of high-speed-ready in-house infrastructure, a right to terminate their network equipment in the private premise of the subscriber provided that it minimises the impact on the private property and at its own costs.

Articles 9 – 11

– These Articles contain final provisions, including the designation of competent bodies and an obligation for review of the regulation within three years after its entry into force.

4. BUDGETARY IMPLICATION

The proposed Regulation has no implications for the budget of the Union.

2013/0080 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on measures to reduce the cost of deploying high-speed electronic communications networks

(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[27],

Having regard to the opinion of the Committee of the Regions[28],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) The digital economy is changing the Single Market profoundly. With its innovation, speed and reach across borders it has the potential to take Single Market integration to a new level. The Union's vision is a digital economy that delivers sustainable economic and social benefits based on modern online services and fast Internet connections. A high quality digital infrastructure underpins virtually all sectors of a modern and innovative economy and is of strategic importance to social and territorial cohesion. Therefore, all citizens and businesses must have the opportunity to be part of the digital economy.

(2) Acknowledging the importance of high-speed broadband rollout, Member States have endorsed the ambitious broadband targets set out in Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "The Digital Agenda for Europe-Driving European growth digitally"[29] ("the Digital Agenda"): 100% broadband coverage by 2013 and increased speeds of 30MBps for all households, with at least 50% of the households subscribing to Internet connections above 100MBps by 2020.

(3) The Digital Agenda has also identified the need for policies to lower the costs of broadband deployment in the entire territory of the Union, including proper planning and coordination and reducing administrative burdens.

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27 OJ C , , p. .

28 OJ C , , p. .

29 COM (2010)245; see also see also the Digital Agenda review, COM (2012) 784 final.

(4) Taking into account the need for action at the EU level to provide better broadband coverage, including by reducing the cost of high-speed broadband infrastructure[30], the Single Market Act II[31] stresses the need for additional efforts in order to achieve quickly the objectives set in the Digital Agenda for Europe by *inter alia* addressing the high-speed network investment challenge.

(5) The rolling out of high-speed fixed and wireless electronic communications networks across the Union requires substantial investments a significant portion of which is represented by the cost of civil engineering works.

(6) A major part of these costs can be attributed to inefficiencies in the rollout process related to the use of existing passive infrastructure (such as ducts, conduits, manholes, cabinets, poles, masts, antenna installations, towers and other supporting constructions), bottlenecks related to co-ordination of civil works, burdensome administrative permit granting procedures, and bottlenecks concerning in-building deployment of networks.

(7) Measures aiming at increasing efficiency in the use of existing infrastructures and at reducing costs and obstacles in carrying out new civil engineering works should provide a substantial contribution to ensure a fast and extensive deployment of high-speed electronic communications networks while maintaining effective competition.

(8) Some Member States have adopted measures intended to reduce the costs of broadband rollout. Scaling up these best practices across the Union could significantly contribute to the establishment of a digital single market. However those practices remain scarce and scattered. Moreover differences in regulatory requirements sometimes prevent cooperation across utilities and may raise barriers to entry for new network operators and new business opportunities, hindering the development of a single market for use and deployment of physical infrastructures for high-speed electronic communications networks. Finally, the initiatives at Member State level do not always seem to be holistic, whereas it is essential to take action across the whole rollout process, and across sectors, in order to achieve a coherent and significant impact.

(9) This Regulation aims at providing some minimum rights and obligations applicable across the Union in order to facilitate the rollout of high-speed electronic communications networks and cross-sector coordination. While ensuring a minimum level playing field, this should be without prejudice to existing best practices and measures adopted at national and local level entailing more detailed provisions and conditions as well as additional measures complementing those rights and obligations, in accordance with the subsidiarity principle.

(10) In light of the *lex specialis* principle, when more specific regulatory measures in conformity with EU law apply, these should prevail over the minimum rights and obligations provided for in this Regulation. Therefore this Regulation should be without prejudice to EU law and in particular to any specific regulatory measure, including the imposition of remedies on undertakings having significant market power, applied in accordance with the Union regulatory framework for electronic communications (Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic

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

31 COM(2012) 573 final.

communications networks and services (Framework Directive)[32], Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)[33], Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive)[34], Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)[35] and Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services[36]).

(11) It can be significantly more efficient for electronic communications network operators, in particular new entrants, to re-use existing physical infrastructures, including those of other utilities, in order to roll-out electronic communications networks, in particular in areas where no suitable electronic communications network is available or where it may not be economically feasible to build-up a new physical infrastructure. Moreover, synergies across sectors may significantly reduce the need for civil works due to the deployment of electronic communications networks and therefore also the social and environmental costs linked to them, such as pollution, nuisances and traffic congestion. Therefore this Regulation should be applicable not only to electronic communications network providers but to any owner or holder of rights to use extensive and ubiquitous physical infrastructures suitable to host electronic communications network elements, such as physical networks for the provision of electricity, gas, water and sewage, heating and transport services.

(12) In view of their low degree of differentiation, physical facilities of such networks can often host at the same time a wide range of electronic communications network elements, including those capable of delivering broadband access services at speeds of at least 30 Mbps in line with the technological neutrality principle, without affecting the main service conveyed and with minimum adaptation costs. Therefore a physical infrastructure that is intended to only host other elements of a network without becoming itself an active network element, can be in principle used to accommodate electronic communications cables, equipment or any other element of electronic communications networks, regardless of its actual use or its ownership. Without prejudice to the pursuit of the specific general interest linked to the provision of the main service, synergies across network operators should be encouraged in order to contribute at the same time to achieving the targets of the Digital Agenda.

(13) While this Regulation should be also without prejudice to any specific safeguard needed to ensure the security and integrity of the networks as well as to ensure that the main service provided by the network operator is not affected, general rules in national legislation prohibiting network operators to negotiate access to physical infrastructures by electronic communications network providers could prevent the establishment of a market for access to physical infrastructures and should therefore be abolished. At the same time, the measures provided in this Regulation are without prejudice to the possibility of the Member States to render the provision of infrastructure access by

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32 OJ L 108, 24.4.2002, p. 33.
33 OJ L 108, 24.4.2002, p. 21.
34 OJ L 108, 24.4.2002, p. 7.
35 OJ L 108, 24.4.2002, p. 51.
36 OJ L 249, 17.9.2002, p. 21.

utilities operators more attractive by excluding revenues stemming from this service from the basis for the calculation of end-users tariffs for their main activity or activities, in accordance with applicable EU law.

(14) A network operator may refuse access to specific physical infrastructures due to objective reasons. In particular, a physical infrastructure may not be technically suitable in view of specific circumstances concerning infrastructures for which access has been requested, including lack of available space. Similarly, in specific circumstances, sharing the infrastructure may jeopardise network integrity and security or may endanger the provision of services that are primarily provided over the same infrastructure. Moreover, when the network operator already provides wholesale physical network infrastructure access that would meet the needs of the access seeker, access to the underlying physical infrastructure may have an adverse economic impact on its business model and incentives to invest while possibly entailing an inefficient duplication of network elements. At the same time in the case of physical infrastructure access obligations imposed pursuant to the Union regulatory framework for electronic communications, such as those on undertakings having significant market power, this would be already covered by specific regulatory obligations that should not be affected by this Regulation.

(15) When electronic communications networks providers request access in a specified area, network operators should make available an offer for the shared use of their facilities under fair terms and conditions, including price, unless access is refused based on objective reasons. Depending on circumstances, several elements could influence the conditions under which such access is granted, such as: any additional maintenance and adaptation costs; any preventive safeguards to be adopted to limit adverse impacts on network security and integrity; any specific liability arrangements in the event of damages; the use of any public subsidy granted for the construction of the infrastructure, including specific terms and conditions attached to the subsidy or provided under national law in compliance with Union law; any constraints stemming from national provisions aiming at protecting the environment, public health, public security or to meet town and country planning objectives.

(16) In the event of disagreement in commercial negotiation on technical and commercial terms and conditions each party should be able to call on a dispute resolution body at national level to impose a solution to the parties, in order to avoid unjustified refusals to deal or the imposition of unreasonable conditions. When determining prices for granting access, the dispute resolution body should take into account the investments made on the physical infrastructure. In the specific case of access to physical infrastructures of electronic communications network operators, the investments made in this infrastructure may directly contribute to the objectives of the Digital Agenda for Europe and downstream competition may be influenced by free-riding. Hence, any access obligation should take into account the economic viability of these investments based on any time schedule for the return on investment, any impact of access on downstream competition, any depreciation of the network assets at the time of the access request, any business case underpinning the investment done, in particular in recently built physical infrastructures used for the provision of high-speed electronic communications services, and any possibility offered to the access seeker to co-deploy.

(17) In order to effectively plan the deployment of high-speed electronic communications networks and to ensure the most effective use of existing infrastructures suitable for rolling out electronic communications networks, undertakings authorised to provide

electronic communications networks should be able to have access to minimum information concerning physical infrastructures available in the area of deployment. Such minimum information should allow for the assessment of the potential for using existing infrastructure in a specific area as well as to reduce damages to any existing physical infrastructures. In view of the number of stakeholders involved and in order to facilitate access to that information, also across sectors and borders, such minimum information should be made available via a single information point. That information point should allow access to minimum information already available in electronic form subject to limitations to ensure network security and integrity or to safeguard legitimate operating and business secrets.

(18) While not imposing any new mapping obligation on Member States, this Regulation provides that minimum information already collected by public sector bodies and available in electronic form pursuant to national initiatives as well as under Union law (such as Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE)[37]) should be made available , e.g. via hyperlink, to a single information point with a view to allow a coordinated access to information on physical infrastructures for electronic communications network providers while at the same time ensuring the security and integrity of any such information. Such provision of information should be without prejudice to the transparency requirements already applicable to the re-use of public sector information pursuant to Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information[38]. Where information available to the public sector does not ensure adequate knowledge of the existing physical infrastructures in a specific area or of a certain type, network operators should make the information available to the single information point upon request.

(19) Where minimum information is not available via a single information point, the possibility of electronic communications network operators to directly request such specific information from any network operator in the area concerned should be nevertheless ensured. In addition to that, if the request is reasonable, in particular if needed in view of the possibility to share existing physical infrastructures or to coordinate civil works, electronic communications network operators should be granted the possibility to make in-site surveys and to request information concerning planned civil works under transparent, proportionate and non-discriminatory conditions and without prejudice to the safeguards adopted to ensure network security and integrity as well as protecting operating and business secrets. Advanced transparency of planned civil works by network operators themselves, or by proactive single information points empowered to request such information, should be incentivised, in particular for areas of greatest utility, by redirecting authorised operators to such information whenever available.

(20) Where disputes concerning access to the information on the physical infrastructures in view of deploying high-speed electronic communications networks arise, the single information point should be able to solve such disputes by means of a binding decision, without prejudice to the possibility of any party to refer the case to a court.

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37 OJ L 108, 25.4.2007, p. 1.

38 OJ L 345, 31.12.2003, p. 90.

(21) Coordination of civil works concerning physical infrastructures may ensure significant savings and minimise inconvenience to the area affected by the deployment of new electronic communications networks. For this reason, regulatory constraints preventing as a general rule the negotiation among network operators with a view to coordinate such works in order to deploy also high-speed electronic communications networks should be prohibited. In the event of civil works not financed by public means, however, this should be without prejudice for the stakeholders to conclude civil works coordination agreements according to their own investment and business plans and their preferred timing.

(22) Civil works fully or partially financed by public means should aim at maximising the positive collective outcome, by exploiting the positive externalities of these works across sectors and ensuring equal opportunities to share the available and planned physical infrastructure in view of deploying electronic communications networks. While this should not negatively affect the main purpose of the civil works financed by public means, timely and reasonable requests to coordinate deployment of elements of high-speed electronic communications networks, ensuring for example the coverage of any additional costs and the minimisation of changes to the original plans, should be met by the undertaking carrying out the civil works concerned under proportionate, non-discriminatory and transparent terms, without prejudice to applicable State aid rules. Specific settlement procedures should be available to ensure the rapid resolution of disputes concerning the negotiation of these coordination agreements under reasonable, proportionate, non-discriminatory and transparent terms. Such provisions should be without prejudice to the right of the Member States to reserve capacity for electronic communications networks even in the absence of specific requests, in view of meeting future demand for physical infrastructures to maximise the value of civil works, or to adopt measures entailing similar rights to coordinate civil works for operators of other types of networks, such as gas or electricity.

(23) A number of different permits concerning the deployment of electronic communications networks or new network elements may be necessary, including building, town planning, environmental and other permits, in order to protect national and Union general interests. The number of permits required for the deployment of different types of electronic communications networks and the local character of the deployment may entail the application of a variety of procedures and conditions. While preserving the right of each competent authority to be involved and maintain its decision making prerogatives in accordance with the subsidiarity principle, the establishment of a single point providing information about all procedures and general conditions applicable to civil works could reduce complexity and increase efficiency and transparency, in particular for new entrants or smaller operators not active in that area. Moreover undertakings deploying electronic communications networks should have the right to submit their permit request through a single contact point, entrusted with the responsibility of coordinating the different procedures and monitoring whether the decisions are adopted within the legal deadlines. Such a contact point should act as a one-stop-shop, without necessarily exercising decision-making powers unless so entrusted by national law

(24) To ensure that permit granting procedures do not act as barriers to investment, and that they do not have an adverse effect on the single market, a decision on whether or not to grant permit requests should be in any case available at the latest within six months, without prejudice to other specific deadlines or obligations laid down for the proper conduct of the procedure which are applicable to the permit granting procedure in

accordance with national or Union law. Such decision may be tacit or explicit in character according to the applicable legal provisions. Moreover, any delay in deciding on permits granting should trigger the right of compensation to undertakings that have requested such permits if they can prove that they have suffered damages due to such a delay. Such a right should be exercised in accordance with the procedural and substantive safeguards provided in national laws.

(25) In order to ensure that such permits granting procedures are completed within reasonable deadlines, Member States may establish several safeguards, such as tacit approval, or take measures to simplify granting procedures by *inter alia* reducing the number of permits needed to deploy electronic communications networks or by exempting certain categories of small or standardised civil works from permit granting. Authorities, at national, regional or local level, should justify any refusal to grant such permits in their competence, on basis of transparent, non-discriminatory, objective and proportionate criteria and conditions. This should be without prejudice to any measure adopted by the Member States, in view of exempting certain elements of electronic communications networks, whether passive or active, from permit granting.

(26) Achieving the targets of the Digital Agenda requires that the infrastructure rollout is brought close to the end-users location, while fully respecting the principle of proportionality as regards any limitation brought to the right of property in view of the general interest pursued. Existence of high-speed electronic communications networks up to the end-user should be facilitated while ensuring at the same time technological neutrality, in particular by high-speed-ready in-building physical infrastructure. In view of the fact that providing for mini-ducts during the construction of the building has only a limited incremental cost while retrofitting buildings with high-speed infrastructure may represent a significant part of the cost of high-speed network deployment, all new or majorly renovated buildings should be equipped with physical infrastructure, allowing the connection of end-users with high-speed networks. In order to roll-out high-speed electronic communications network, moreover, new multi-dwelling buildings, as well as majorly renovated multi-dwelling buildings should be equipped with an access or concentration point, by which the provider may access the in-building network. In practice, this would mean that building developers should foresee that empty ducts are provided from every dwelling to a concentration point, located in or outside the building. There may be cases such as new single dwellings or categories of major renovation works in isolated areas where the prospect of high-speed connection is considered, on objective grounds, too remote to justify the additional costs of deploying in-house high-speed-ready physical infrastructures and/or a concentration point.

(27) When providers of public communications networks deploy high-speed networks in a specific area, there are significant economies of scale if they can terminate their network to the building concentration point, irrespective of whether the owners, condominium or residents have expressed explicit interest for the service at that moment in time, but provided that impact on private property is minimised, by using existing physical infrastructure and restoring the affected area. Once the network is terminated at the concentration point, the connection of an additional customer is possible at a significantly lower cost, in particular by means of access to a high-speed-ready vertical segment inside the building, where it already exists.

(28) In view of the social benefits stemming from digital inclusion and taking into account the economics of deployment of high-speed electronic communications networks,

where there is neither existing passive or active high-speed-ready infrastructure serving end-users premises nor alternatives to provide high-speed electronic communications networks to end-users, any provider of public communications networks provider should have a right to terminate its network to a private premise at its own costs, when it has obtained the agreement of the subscriber, and provided that it minimises the impact on private property, for example, when possible, by reusing existing physical infrastructure available in the building or ensuring full restoration of the affected areas.

(29) Without prejudice to the tasks entrusted to national regulatory authorities provided under the Union regulatory framework for electronic communications, in the absence of specific designations by Member States, in order to ensure consistent dispute settlement decisions, such functions provided for in this Regulation should be assigned to the authorities fulfilling the tasks provided in Article 20 of Directive 2002/21/EC, taking into account the expertise available and the guarantees of independence and impartiality. However, in line with the principle of subsidiarity, this Regulation should be without prejudice to the possibility of Member States to allocate the regulatory tasks provided herewith to authorities better suited to fulfil them in accordance with the domestic constitutional system of attribution of competences and powers and with the requirements set forth in this Regulation.

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

(31) In order to ensure effectiveness of the information points provided for in this Regulation, Member States deciding to appoint different bodies from the national regulatory authority fulfilling the tasks provided in Article 20 of Directive 2002/21/EC should ensure adequate resources as well as that the relevant information concerning a specific area is made available at such information points at an optimal level of aggregation where valuable efficiencies may be ensured in view of the tasks assigned (such as the cadastre). In this regard, Member States may consider the possible synergies and economies of scope with the Points of Single Contact within the meaning of Article 6 of Directive 2006/123/EC of 12 December 2006 on services in the internal market (the Services Directive), with a view to build on existing structures and maximising the benefits for end-users.

(32) Since the objectives of the proposed action aiming at facilitating the deployment of physical infrastructures suitable for high-speed electronic communications networks across the Union cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(33) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably the right to privacy and the protection of business secrets, the freedom to conduct business, the right to property and the right to an effective remedy. This Regulation has to be applied by the Member States in accordance with those rights and principles.

HAVE ADOPTED THIS REGULATION:

Article 1
Subject matter and scope

1. This Regulation aims to facilitate and incentivise the roll-out of high-speed electronic communications networks by promoting joint use of existing and enabling more efficient deployment of new physical infrastructure so that such networks can be rolled out at lower cost.

2. This Regulation shall apply to all civil works and physical infrastructure, as defined in Article 2.

3. This Regulation is without prejudice to the rights of Member States to maintain or introduce measures in conformity with Union law which contain more detailed provisions than those set out in this Regulation.

4. This Regulation is without prejudice to Directive 2002/21/EC, Directive 2002/20/EC, Directive 2002/19/EC, Directive 2002/22/EC and Directive 2002/77/EC.

Article 2
Definitions

For the purposes of this Regulation, the definitions set out in Directives 2002/21/EC, 2002/20/EC, 2002/19/EC, 2002/22/EC and 2002/77/EC shall apply.

The following definitions shall also apply:

(1) "network operator" means an electronic communications network provider as well as an undertaking providing a physical infrastructure intended to provide: a service of production, transport or distribution of gas, electricity, including public lighting, heating, water, including disposal or treatment of waste water and sewage; transport services, including railways, roads, ports and airports;

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

(3) “high-speed electronic communications network” means an electronic communication network which is capable of delivering broadband access services at speeds of at least 30 Mbps.

(4) "civil works" every outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfil an economic or technical function and entails one or more elements of a physical infrastructure;

(5) "public sector body" means a State, regional or local authority, a body governed by public law or an association formed by one or several such authorities or one or several such bodies governed by public law;

(6) "body governed by public law" means any body:

(a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;

(b) having legal personality;

(c) financed, in full or for the most part, by the State, or regional or local authorities, or other bodies governed by public law; or subject to management supervision by such authorities or bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or by other bodies governed by public law;

(7) "in-building physical infrastructure" means physical infrastructure at the end-user's location, including elements under joint ownership, intended to host wired and/or wireless access networks, where such access networks are capable of delivering electronic communications services and connecting the building concentration point with the network termination point;

(8) "high-speed-ready in-building physical infrastructure" means in-building physical infrastructure intended to host elements of high-speed electronic communications networks;

(9) "major renovation works" means building or civil engineering works at the end user's location encompassing structural modifications of the in-building physical infrastructure and requiring a building permit;

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

Article 3
Access to existing physical infrastructure

1. Every network operator shall have the right to offer access to its physical infrastructure in view of deployment of elements of high-speed electronic communications networks.

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

3. Every refusal of access shall be based on objective criteria, which may relate in particular to:

(a) the technical suitability of the physical infrastructure to which access has been requested to host any of the elements of electronic communications networks referred to in paragraph 2;

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

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

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

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

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

4. Where access is refused or agreement on specific terms and conditions, including price, has not been reached within two months from the written request for access, either party is entitled to refer the issue to the competent national dispute settlement body.

5. The national dispute settlement body referred to in paragraph 4 shall, taking full account of the principle of proportionality, issue a binding decision to resolve the dispute initiated pursuant to paragraph 4, including the determination of fair terms, conditions and prices where appropriate, within the shortest possible time frame and in any case within four months, without prejudice to the possibility of any party to refer the case to a court. Any price set by the dispute settlement body shall take into account the impact of the requested access on the business plan underpinning the investments made by the network operator to whom access is requested, in particular in case of recently built physical infrastructures used for the provision of high-speed electronic communications services.

Article 4
Transparency concerning physical infrastructure

1. In order to request access to physical infrastructure in accordance with Article 3, every undertaking authorised to provide electronic communications networks shall have the right to access, upon request, via a single information point, the following set of minimum information concerning the existing physical infrastructure of any network operator:

(a) location, route and geo-reference coordinates;

(b) size, type and current use of the infrastructure;

(c) name of the owner or of the holder of rights to use physical infrastructure and a contact point.

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

Access to the minimum information for the specified area shall be granted forthwith in electronic form under proportionate, non-discriminatory and transparent terms. Access to the minimum information may be limited by the single information point only when considered necessary in view of the security of the networks and their integrity or operating and business secrets.

The single information point shall ensure that access to the minimum information pursuant to this paragraph is available by [*Publications Office: please insert the exact date: entry into force of this Regulation + 12 months*] at the latest.

2. Every public sector body holding in electronic format the minimum information referred to in paragraph 1 concerning the physical infrastructure of a network operator by reason of its tasks shall make it available to the single information point by electronic means before [*Publications Office: please insert the exact date: entry into force of this Regulation + 6 months*]. Any update to this information and any new minimum information referred to in paragraph 1 received by the public sector body shall be made available to the single information point within one month from the receipt.

3. Where the minimum information referred to in paragraph 1 is not held by public sector bodies in accordance with paragraph 2, any network operator shall make available upon specific request of the single information point the minimum information referred to in paragraph 1 on its physical infrastructure in electronic format within one month from the request. The network operator shall make available to the single information point any update of the minimum information provided within one month from the actual modification of the physical network which changes that minimum information.

4. Where minimum information referred to in paragraph 1 is not available via the single information point, network operators shall provide access to such information upon specific written request of an undertaking authorised to provide electronic communications networks. The request shall specify the area concerned in view of deploying elements of high-speed electronic communications networks. Access to information shall be granted within one month from the written request under proportionate, non-discriminatory and transparent terms, without prejudice to limitations pursuant to paragraph 1.

5. Upon specific written request of an undertaking authorised to provide electronic communications networks, network operators shall meet reasonable requests for in-site surveys of specific elements of their physical infrastructure. The request shall specify the elements of the network concerned in view of deploying elements of high-speed electronic communications networks. In-site surveys of the specified network elements shall be granted under proportionate, non-discriminatory and transparent terms within one month from the written request, without prejudice to limitations pursuant to paragraph 1.

6. Upon specific written request of an undertaking authorised to provide electronic communications networks, any network operator shall make available the following set of minimum information concerning on-going or planned civil works related to its physical infrastructure for which a permit has been granted, a permit granting procedure is pending or first submission to the competent authorities for permit granting is envisaged in the following six months:

(a) the location and the type of works;

(b) the network elements involved;

(c) the estimated date for starting the works and their duration;

(d) a contact point.

The request of an undertaking authorised to provide electronic communications networks shall specify the area concerned in view of deploying elements of high-speed electronic communications networks. Within two weeks from the written request, network operators shall provide the requested information under proportionate, non-discriminatory and transparent terms, without prejudice to limitations pursuant to paragraph 1.

7. The network operator may refuse the request pursuant to paragraph 6 if:

- it has made the requested information publicly available in electronic format or

- access to such information is ensured via a single information point.

8. Upon specific request any network operator shall make available to a single information point the set of minimum information referred to in paragraph 6.

9. In the event of a dispute arising in connection with the rights and obligations provided for in paragraphs 4 to 7, either party shall be entitled to refer it to a national dispute settlement body. The body in charge of dispute settlement shall, taking full account of the principle of proportionality, issue a binding decision to resolve the dispute within the shortest possible time frame and in any case within two months, without prejudice to the possibility of any party to refer the case to a court.

10. Member States may provide for exemptions from the obligations provided for in paragraphs 1 to 5 in the case of existing physical infrastructures considered not technically suitable to deploy high-speed electronic communications networks. Such measures shall be duly motivated in this regard. The interested parties shall be given the opportunity to

comment on the draft measures within a reasonable period. Any such measure shall be notified to the Commission.

Article 5
Coordination of civil works

1. Every network operator shall have the right to negotiate agreements concerning coordination of civil works with undertakings authorised to provide electronic communications networks in view of deploying elements of high-speed electronic communications networks.

2. Every undertaking performing civil works fully or partially financed by public means shall meet any reasonable request from undertakings authorised to provide electronic communications networks in view of deploying elements of high-speed electronic communications networks for civil works coordination agreement on transparent and non-discriminatory terms, provided that this does not entail any additional costs for the initially envisaged civil works and that the request to coordinate is filed as soon as possible and in any case at least one month before the submission of the final project to the competent authorities for permit granting.

3. Where agreement on coordination of civil works pursuant to paragraph 2 is not achieved within one month from the formal request to negotiate, any party is entitled to refer the issue to the competent national dispute settlement body.

4. The national dispute settlement body referred to in paragraph 3 shall, taking full account of the principle of proportionality, issue a binding decision to resolve the dispute initiated pursuant to paragraph 3, including the determination of fair and non-discriminatory terms, conditions and charges where appropriate, within the shortest possible time frame and in any case within two months, without prejudice to the possibility of any party to refer the case to a court.

5. Member States may provide for exemptions from the obligations provided for in this Article for civil works of insignificant value. Such measures shall be duly motivated in this regard. The interested parties shall be given the opportunity to comment on the draft measures within a reasonable period. Any such measure shall be notified to the Commission.

Article 6
Permit granting

1. Every undertaking authorised to provide electronic communications networks shall have the right to access by electronic means via a single information point, upon request, any information concerning the conditions and procedures applicable for granting permits for civil works needed in view of deploying elements of high-speed electronic communications networks, including any exemptions applicable to such elements as regards some or all permits required under national law.

2. Every undertaking authorised to provide electronic communications networks shall have the right to submit, by electronic means via the single information point, applications for permits required for civil works needed in view of deploying elements of high-speed electronic communications networks. The single information point shall facilitate and coordinate the permit granting process. In particular it shall ensure that the applications are forwarded to any competent authorities involved in granting the permits applicable to the civil works at stake as well as monitor compliance with the deadlines applicable in accordance with paragraph 3.

3. The competent authorities shall grant or refuse permits within six months from receiving a request, without prejudice to other specific deadlines or obligations laid down for the proper conduct of the procedure which are applicable to the permit granting procedure in accordance with national or Union law. Any refusal shall be duly justified on the basis of objective, transparent, non-discriminatory and proportionate criteria.

4. Every undertaking authorised to provide electronic communications networks which has suffered damage as a result of non-compliance with the deadlines applicable under paragraph 3 shall have the right to receive compensation from the competent authority for the damage suffered, in accordance with national law.

Article 7
In-building equipment

1. All newly constructed buildings at the end-user's location, including elements under joint ownership, for which applications for building permits have been submitted after [*Publications Office: please insert the exact date of the entry into force of this Regulation*], shall be equipped with a high-speed-ready in-building physical infrastructure, up to the network termination points. The same obligation applies in the event of major renovation works for which applications for building permits have been submitted after [*Publications Office: please insert the exact date of the entry into force of this Regulation*].

2. All newly constructed multi-dwelling buildings, for which applications for building permits have been submitted after [*Publications Office: please insert the exact date of the entry into force of this Regulation*], shall be equipped with a concentration point, located inside or outside the building, and accessible to electronic communications networks providers, whereby connection to the high-speed-ready in-building infrastructure is made available. The same obligation applies in the event of major renovation works concerning multi-dwelling buildings for which applications for building permits have been submitted after [*Publications Office: please insert the exact date of the entry into force of this Regulation*].

3. Member States may provide for exemptions for categories of buildings, in particular single dwellings, or major renovation works, from the obligations provided for paragraph 1 and 2, when the cost of fulfilling those obligations is disproportionate. Such measures shall be duly motivated. The interested parties shall be given the opportunity to comment on the draft measures within a reasonable period. Any such measure shall be notified to the Commission.

Article 8
Access to in-building equipment

1. Every provider of public communications networks shall have the right to terminate its network at the concentration point, provided that it minimise the impact on the private property and at its own costs, in view of accessing the high-speed-ready in-building physical infrastructure.

2. Every provider of public communications networks shall have the right to access any existing high-speed-ready in-building physical infrastructure on reasonable terms if duplication is technically impossible or economically inefficient. The holder of a right to use the in-building physical infrastructure shall grant access under non-discriminatory terms and conditions.

3. Where agreement on access pursuant to paragraph 1 or 2 is not achieved within two months from the formal request of access, each party shall have the right to refer the issue to the competent national dispute settlement body in order to assess the compliance with the requirements provided for in those paragraphs. This national dispute settlement body shall,

taking full account of the principle of proportionality, issue a binding decision to resolve the dispute within the shortest possible time frame and in any case within two months, without prejudice to the possibility of any party to refer the case to a court.

4. In the absence of available high-speed-ready in-building infrastructure, every provider of public communications networks shall have the right to terminate its network equipment at the premise of a subscriber to a high-speed electronic communications service, subject to its agreement, provided that it minimises the impact on the private property and at its own costs.

Article 9
Competent bodies

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

2. Any other national dispute settlement body appointed by Member States pursuant to paragraph 1 shall be legally distinct and functionally independent of all network operators. It shall have the power to impose on network operators appropriate, effective, proportionate and dissuasive sanctions in the event of breach of the obligations stemming from the decisions adopted when deciding the dispute.

3. The national regulatory authority which fulfils the tasks provided in Article 20 of Directive 2002/21/EC shall perform the functions of the single information point referred to in Article 4 and Article 6, unless the Member State appoints other competent bodies.

4. Any other single information point appointed by Member States pursuant to paragraph 3 shall have the power to impose on network operators appropriate, effective, proportionate and dissuasive sanctions in the event of breach of the obligations stemming from Article 4 (3) and (8).

5. Member States shall notify to the Commission the identity of each competent body designated in accordance with this Article for carrying out a task under this Regulation by [*Publications Office: please insert the exact date: entry into force of this Regulation*] and any modification thereof, before such designation or modification enters into force.

6. Any decisions taken by any of the competent bodies referred to in this Article shall be subject to an appeal before a court in accordance with national law.

Article 10
Review

The Commission shall present a report to the European Parliament and the Council by [*Publications Office: please insert the exact date: entry into force of this Regulation + 3 years*] at the latest on the implementation of this Regulation. The report shall include a summary of the impact of the measures provided by this Regulation and an assessment of the progress towards achieving its objectives.

Article 11
Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*