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NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
No. Cion doc.:	6845/23
Subject:	Proposal for a Regulation of the European Parliament and of the Council on measures to reduce the cost of deploying gigabit electronic communications networks and repealing Directive 2014/61/EU (Gigabit Infrastructure Act) - Progress report

I. INTRODUCTION

1. The Commission adopted the proposal for a Regulation on measures to reduce the cost of deploying gigabit electronic communications networks and repealing Directive 2014/61/EU (Gigabit Infrastructure Act)¹ on 23 February 2023.
2. The proposal has been published as an element of the Connectivity initiatives by the Commission, alongside with the draft Gigabit Recommendation providing guidance to the National Regulatory Authorities on obligations imposed on SMP market players and the Exploratory consultation launched on the future of the electronic communication sector and its infrastructure.

¹ doc. 6845/23.

3. The main objective of the proposal, based on Article 114 TFEU, is to lower the unnecessarily high costs of the electronic communication infrastructure deployment, partially caused by the permit-granting procedures before deploying or upgrading the networks. These procedures are still complex, sometimes lengthy, and different across Member States. The proposal also aims to speed up the deployment of the networks, to provide legal certainty and transparency for all economic actors involved and to provide for more efficient planning and deployment processes for operators of public electronic communications networks. The proposal also addresses deployment and access to in-building physical infrastructure. The proposal is expected to facilitate cross-border applications which need ubiquitous VHCN and to allow stakeholders, electronic communications operators, equipment manufacturers or civil engineering companies, for achieving better economies of scale.
4. In the European Parliament, the Committee for Industry, Research and Energy (ITRE) has been nominated as the committee responsible for the negotiations on the Gigabit Infrastructure Act. The Rapporteur is MEP Alin Mituta (Renew Europe, RO). The mandate of the European Parliament is planned for Q4 2023.
5. The European Economic and Social Committee and the European Committee of the Regions have both been requested to provide their opinions on the proposal.

II. WORK WITHIN THE COUNCIL

6. In the Council, the Working Party on Telecommunications and Information Society (hereinafter: WP TELECOM) has been instructed to examine the proposal. The WP TELECOM started discussing the proposal on 7 March 2023. On the subsequent seven meetings held until 2 May 2023, alongside the detailed presentation by the Commission of the accompanying impact assessment and the articles and recitals, delegations held an early exchange of views on the provisions of the proposal.
7. At for the present state of play, the Swedish Presidency has requested the Member States to provide their detailed comments on the proposal.

8. Member States have, in general, welcomed the proposal and the aims of deployment of very high-capacity networks and cost reduction as well as more harmonised processes and addressing the shortcomings of the current Broadband Cost Reduction Directive. The detailed discussions that have taken place so far have revealed some areas that will need particular attention by the Presidency when it prepares a compromise proposal to the Delegations. These areas are, in particular:

a) 'Tacit' approval

The proposal contains detailed rules for the procedure for granting permits and rights of way. It foresees that in case of an unjustified delay in the permit-granting procedure on behalf of a competent authority missing the set deadline, the permit shall be deemed granted.

Several Member States have signalled that such a system of 'tacit' approval of permits may be in collision with their constitutional arrangements regarding the autonomy and scope of powers of their local authorities and, in some cases, it may also contravene rights of ownership of third persons. Member states therefore need to further examine the compatibility of this provision with their national legislation. Given the sensitive legal nature of the 'tacit' approval the related definitions may also need to be elaborated in the proposal.

b) Disclosure of works on critical infrastructure

The proposal requires network operators to make available information on planned civil works on their physical infrastructure. However, Member States shall identify, based on duly justified and proportionate reasons, the civil works that would concern critical national infrastructure or national security, thus justifying why those civil works are not subject to this obligation. The proposal provides for that such information shall be published via a single information point (SIP) and notified to the Commission.

Some Member States would refrain from making available either the works on or installations of critical national infrastructure or notifying the Commission about these. In addition, Member states and operators of critical infrastructure have obligations also under the Directive on the Resilience of Critical Facilities², therefore the interplay between the provisions in GIA and CER need to be further examined.

c) Legal form of the proposal

The legal form of the proposal has abandoned the form of a directive of the BCRD it replaces, in favour of the directly applicable regulation with the aim to increase harmonisation. The Commission considers the direct effect as essential from the point of view of commercial negotiations, lowering investment risks and increasing predictability for market players, avoiding unnecessary delays in network deployment.

Some Member states have raised that the changed legal form may pose difficulties in countries with federal system where the various legal provisions related to the subject of the proposal may vary region by region. The direct applicability also raises the question of whether enough flexibility can be ensured for the Member states that wish to go beyond the requirements in this proposal, where necessary, or to allow for taking into consideration their particular national circumstances.

d) Guidances and implementing powers

The proposal provides for the possibility for the Commission to issue guidance on the application of the provisions on civil works coordination and on access to both existing physical infrastructure and to in-building infrastructure. It mandates the Commission, by way of an implementing act, to specify the categories of deployments that will be exempted from permit granting procedures in the Member States.

² Directive (EU) 2022/2557, CER Directive

Some Member states do not agree with the necessity of a guidance on these issues from the Commission, or, find that a guidance from BEREC, as an alternative, could be more useful. The provision of the Commission with implementing powers to define exemptions from permit granting procedures in the Member states will also need further deliberation.

e) Single information points (SIPs)

As several of the Member states already have functioning solutions for information points at regional and national level, they need further clarification on aspects such as which components of permit granting procedure should SIP deal with, what are the modalities of online accessing and who owns the data that are provided via the SIP in an electronic format, what are the costs and the timeframe that is needed to set up and to operate these information points by the Member states.

f) Technological neutrality

The provisions on in-building physical infrastructure require the installation of fibre wirings, excluding coaxial cables. Some member states would prefer to include them as well, avoiding exclusive references to fibre cables in the text, using instead technology-neutral terms and requirements like quality or speed. The neutral approach would also extend to avoiding naming the certification scheme and the resulting label as ‘fiber-ready’, too.

9. The Swedish Presidency intends continue working on this proposal during its term and will prepare its smooth handover to the incoming Spanish Presidency.

III. CONCLUSION

The COREPER is invited to take note of this progress report from the Presidency, with a view to submitting it to the TTE Telecom Council at its meeting on 2 June 2023.