

## Feedback from GIGAEurope on the European Commission's Proposal for a Gigabit Infrastructure Act

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### Introduction

As a trade association representing private operators that invest in and operate Gigabit and 5G communications networks, [GIGAEurope](#) appreciates this opportunity to provide feedback on the European Commission's Proposal for a Regulation on measures to reduce the cost of deploying Gigabit electronic communications networks (the proposed Gigabit Infrastructure Act).

Addressing obstacles to crowding private investment into the roll-out of European digital infrastructure is an issue of great urgency. Cost and administrative burden associated with local broadband network roll-out should be reduced as a matter of priority. Attracting more private investment into European fixed Gigabit and 5G networks, at pace, is critical to advancing sustainable infrastructure competition and to the overall success of Europe's Digital Strategy.

GIGAEurope is fully [committed](#) to playing its part in reaching the 2030 Digital Decade connectivity targets. With these goals in mind, we wholly support a rapid adoption and implementation of the Gigabit Infrastructure Act. We also welcome this opportunity to provide feedback on the extent to which the Gigabit Infrastructure Act, as proposed, is positioned to deliver on its aim to lower roll-out costs and to accelerate deployment of very high-capacity fixed and wireless networks (VHCN) in practice.

To that end, GIGAEurope's contribution is structured in two parts:

- (i) **Section 1** notes important investment-enabling developments in the draft Regulation compared to its predecessor, the Broadband Cost Reduction Directive (the BCRD); and
- (ii) **Section 2** refers to aspects of the draft Regulation that could be improved even further to support EU investor confidence in support of the Digital Decade targets.

Finally, for the sake of clarity, the conclusion contains a short summary of GIGAEurope's key insights on the proposed Gigabit Infrastructure Act.

### Section 1: Key improvements

- **A Regulation as the instrument of choice**

The effectiveness of the BCRD has varied greatly between Member States, with limited success in areas of enforcement, dispute resolution and local permit costs and procedures. Our members have

not experienced any significant reduction in costs (nor the resulting improvement of roll-out prospects) as a result of the BCRD. In this regard, whilst we consider that the BCRD has led to some improvements, it has largely failed to achieve its objectives in the short term of reducing costs and time of deployment. Late implementation by Member States has resulted in slow progress towards the objectives. Similarly, partial, inconsistent and incorrect implementation has led to a high level of fragmentation between Member States and, in some cases, to additional costs/difficulties for operators.

Against this background, GIGAEurope supports the choice of a Regulation to avoid the fragmentation and delays in implementation that have undermined the effectiveness of the BCRD. At the same time, the proposed Gigabit Infrastructure Act aims to leave sufficient room to Member States to adopt more detailed rules to reflect their national situations.

- **Clarification on areas of overlap with existing policy provisions**

GIGAEurope welcomes the helpful clarification included in Article 3(5) of the proposed Gigabit Infrastructure Act regarding the interrelationship with access obligations in Directive (EU) 2018/1972 establishing the European Electronic Communications Code (the Code) and with access obligations under the EU Broadband State Aid Rules.

It is now clear that, where physical infrastructure is already subject to access obligations imposed by national regulatory authorities pursuant to the Code, or pursuant to the application of the EU Broadband State Aid Rules, it will not be subject to the access obligations set out in the proposed Gigabit Infrastructure Act for as long as such obligations remain in place. This important clarification on the complementary nature of the Gigabit Infrastructure Act provides valuable legal certainty on the hierarchy of access obligations across closely related policy instruments.

- **Extension of physical infrastructure to include publicly-owned non-network elements**

GIGAEurope's members welcome the positive extension (in Article 2(2)(b)) of the definition of physical infrastructure, and consequent broadening of the scope of the access obligations in Article 3, to include infrastructure owned or controlled by public sector bodies, even where not part of a network.

⇒ In addition, GIGAEurope believes that this definition should be further extended to **include rooftops and other relevant facilities based on national circumstances**. In conjunction with Article 3, this will allow access to rooftops, enabling operators to install additional antennas in urban areas, particularly in areas where buildings are owned by (semi) public bodies such as social housing organizations.

Availability of non-network elements owned or controlled by public authorities (such as buildings or entries to buildings, and any other asset including street furniture, such as light poles, street signs, traffic lights, billboards, bus and tramway stops and metro stations) are crucial for deploying networks efficiently. Access to facilities such as rooftops or street furniture is becoming particularly important in the context of 5G small cell deployment and fixed wireless access (FWA) technology.<sup>1</sup>

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<sup>1</sup> Access conditions should also be proportionate and non-discriminatory. In Hungary, for example, the first operator to request access to electricity poles must bear the full cost of upgrading the poles for communications purposes. Any further operators that may subsequently be awarded access to these poles are not obliged to

- **Coordination of civil works limited to publicly-funded works only**

GIGAEurope welcomes the fact that the obligation to coordinate civil works under transparent and non-discriminatory terms (in Article 5(2)) is limited to civil works fully or partially financed by public means.

Maintaining a publicly-funded dimension to this obligation is critical in order to preserve long-term private investment incentives and to avoid policy overreach devaluating the business case for VHCN in Europe. A balanced and proportionate approach is needed to ensure that the proposed Gigabit Infrastructure Act delivers on its ultimate aim of facilitating and stimulating high-speed network rollout.

New deployment information is furthermore highly confidential and requiring disclosure to other operators for this purpose has the potential to distort competition.

- **Digitisation of single information points (SIPs)**

GIGAEurope wholly agrees with the proposal in Article 10 to fully digitalise SIPs. This means that the SIP should contain a repository of information in electronic format, where information can be readily accessed and requests made online using digital tools, such as webpages, digital applications, and digital platforms (see, for example, recitals 26 and 29).

Such digitalised information platforms are an essential ingredient in reducing administrative burdens and ensuring an efficient and streamlined flow of information, thus contributing significantly to easing the costs and time of network deployment across the EU.

- **Alignment of timelines for granting permits, including rights of way**

GIGAEurope welcomes the alignment of timelines (to four months) in Article 7 for decisions relating to both permits and rights of ways (Articles 7(5) first subparagraph and (6) respectively). In certain Member States, our members have experienced difficulties with the timeliness of the procedures and we consider that strict time periods are key to the operational success of the Gigabit Infrastructure Act. Furthermore, it is imperative that rules on the conditions and procedures applicable to granting permits and rights of way are streamlined and consistent at national level.

⇒ GIGAEurope underlines that, in order to provide long-term certainty for investment in infrastructure roll-out, the **permits granted should last a minimum of 10 years** and have **automatic renewals** unless there are clear and necessary conditions requiring full new applications.

- **Tacit approval in case of inaction by competent authorities**

GIGAEurope supports Article 7(7) that stipulates that a request for a permit or rights of way shall be deemed to be granted in the absence of a response from the competent authority within the four-month deadline referred to Article 7(5) and in Article 7(6) (unless such deadline is extended pursuant to Article 7(5) fourth subparagraph). Slow administrative response has proven to be a major stumbling block for obtaining timely permits for network roll-out and we believe tacit approval

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compensate the first operator for a proportion of the initial upgrade costs. This causes market distortion and penalizes first-mover infrastructure investors.

regarding permits and rights of way provides a welcome incentive to speed up administrative processes to the benefit of operators and end-users.

## Section 2: Areas for further improvements

### ▪ Preservation of national best practices under the BCRD

As stated before, GIGAEurope strongly supports the principle laid down in Article 1(3) that Member States may maintain or introduce measures which contain more detailed provisions than those set out in this Regulation where they serve to promote the joint use of existing physical infrastructure or enable a more efficient deployment of new physical infrastructure. The proposed Gigabit Infrastructure Act therefore aims to leave room to Member States to adopt, and importantly, to maintain more detailed rules to reflect their national situations.

As operators in many cases have come to rely on existing rules and procedures that proved effective in practice, GIGAEurope underlines that in Article 1(3):

⇒ While **GIGAEurope supports a Regulation as the chosen legal instrument**, it should be stated more explicitly, however, that this choice should **not be interpreted as allowing Member States to roll back existing positive practices** under the BCRD and revert back to more generic provisions contained in the Act.

### ▪ Transparency on physical infrastructure

Article 4 of the proposed Gigabit Infrastructure Act mandates the provision of minimum information on existing physical infrastructure by network operators and public sector bodies, including georeferenced information, via SIPs and in electronic format. This means that network operators would now be required to proactively provide information to the SIP concerning existing physical infrastructure, including georeferenced information and planned civil works (both publicly and privately funded). This information could be accessed by other operators upon request.

On this point, GIGAEurope has a number of reservations, as follows:

- These obligations would significantly increase the burden on connectivity network providers, especially at the initial stage of collecting information and then subsequently updating the information on a continuous basis. GIGAEurope therefore believes that the **provision of the information outlined in Article 4 should be done upon request**, like it was the case under the BCRD.
- Particularly regarding the provision of information for negotiating agreements on the coordination of civil works (Article 6), GIGAEurope wishes to stress that **new deployment information is highly confidential and competitively sensitive**. Requiring proactive disclosure to other operators has the potential to distort competition and introduce risks to network security. As reflected by recital 30, it will be important to strike a balance in practice between sharing information and maintaining the confidentiality of network information and the security of networks.

Further improvements are needed to take account of the confidential and competitively sensitive nature of information requested:

- ⇒ In cases where information required to request access to physical infrastructure, e.g. to negotiate agreements on coordination of civil works (Articles 5 and 6) and to apply for permits including rights of way (Article 7), is confidential/competitively sensitive or disproportionate, GIGAEurope believes that **adequate exemptions from the short procedural timelines** for providing such information should be warranted to reflect the evolutionary nature and complexity of this information. In certain cases, operators may not yet have a definitive outlook by the time of developing network rollout plans. Member States should be able to provide provisional information on planned civil works and be able to correct the information once there is more clarity on the rollout. Therefore, any immediate legal effects associated with these deadlines should also be avoided. For example, Article 7(4), which states that competent authorities shall, within 15 working days, reject applications for permits by operators which themselves have not made the minimum information available via a SIP, should be adapted to make specific provision for when such information is confidential/competitively sensitive or disproportionate to provide.
- ⇒ With regard to the provision of **georeferenced information** as required in Articles 4(1) and 6(1), GIGAEurope underlines that there should be alignment with the rules regarding information requests to undertakings under Article 20 of the Code and the procedures and warranties to protect the confidentiality of information from operators on planned infrastructure investments under the revised Broadband State Aid Guidelines where it refers to the Commission Communication C(2003) 4582 on professional secrecy in State aid decisions.

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

According to Article 8 of the proposed Gigabit Infrastructure Act, the obligations to install ‘fibre-ready’ in-building infrastructure up to a network termination point and for fibre wiring to be installed in-building would be limited to buildings and multi-dwelling units that are newly constructed or under renovation. On this point, GIGAEurope believes that:

- ⇒ In order to be consistent with the Digital Decade connectivity targets and the principle of technology-neutrality, ‘fibre-ready’ (also in the context of Article 8(5)) should be replaced by **‘gigabit-ready VHCN’**, as ‘fibre-ready’ risks being interpreted as relating to FTTH technology only, whilst there are alternative Gigabit network technologies like DOCSIS 3.1 and DOCSIS 4.0.
- ⇒ In addition, GIGAEurope considers it important to extend this requirement (as amended to refer to ‘gigabit-ready VHCN’) to **include existing buildings** in order to warrant competition between Gigabit network technologies. In particular, where alternative Gigabit networks are already in place in buildings and multi-dwelling units, it should be avoided that Article 8 would, in case of building renovations, e.g. for clean energy purposes, necessitate the upgrade of existing DOCSIS 3.1 networks to FTTH in order to warrant access to buildings going forward. This would lead to disproportionate investment burdens for existing operators, particularly in countries with very high penetration of HFC networks (like the Netherlands or Belgium).

Introduction of technology-neutral standards for in-building infrastructure will help with facilitating both deployment and access, as installed cabling at present often does not meet the needs of Gigabit operators who are obliged to rely on the quality of the infrastructure installed by the incumbent or by the building owner.

- **Funding of the SIPs**

Provisions in relation to the funding of the SIP should be strengthened and should more clearly recognise the availability of EU funding for setting up single national digital entry points, such as the Recovery and Resilience Facility, the Digital Europe Programme, and the European Regional Development Fund.

- ⇒ Whilst recital 56 acknowledges the possibility to draw on **financial support under EU funds**, this important point should also feature in the operational part of the draft Regulation.

## Conclusion / Summary

Digital infrastructure is an essential asset for the EU to achieve its digital goals, but the common target of full coverage by fixed Gigabit networks and all populated areas covered by 5G (or equivalent) by 2030 cannot be achieved if regulatory support for VHCN deployment is inconsistent. According to the [WIK support study](#), the cost of EU inaction would potentially result in an “overspend of more than €2bn in public funds, and excess investments by private operators of more than €10bn”, as well as in “a failure to achieve EU connectivity targets” and “costs to ECN operators and public administrations which may exceed €40m per annum, due to excess bureaucracy”.

GIGAEurope believes that the choice of a Regulation as the legal instrument will address important practical impediments to creating scale for investments in network roll-out. We welcome the provision that Member States may go beyond the Regulation’s rules, whilst, at the same time, we call for existing national best practices and rules developed under the BCRD that go beyond the Regulation to be preserved. We propose to further extend the physical infrastructure definition (and access obligation) to publicly-owned non-network elements and street furniture to also explicitly include rooftops. We welcome efforts to simplify and accelerate the permit granting process, including streamlining of four-month response timelines, tacit approvals in case of inaction by competent authorities, and ensuring a single (digitalised) information point.

At the same time, we urge a proportionate approach to obligations concerning sharing of information regarding network deployments. Further, with a view to safeguarding incentives for private sector investment, GIGAEurope calls for the operative part of the proposed Gigabit Infrastructure Act to explicitly recognise the availability of EU funding for financing the SIP.

Finally, we wish to underline the importance of technology neutrality in the proposed tools to reduce the cost and time of network deployment. Consistent with the connectivity targets defined in the Digital Decade Programme, GIGAEurope believes that the proposed Gigabit Infrastructure Act tends to favour FTTH technology over other Gigabit network technologies, in particular DOCSIS 3.1 and 4.0. In the case of access to in-building physical infrastructure and wiring, we believe that the proposed Gigabit Infrastructure Act should take account of DOCSIS networks to maintain the market dynamics associated with competition between gigabit-capable infrastructures that has driven innovation and investment in network expansion since liberalisation. References to ‘fibre-ready’ should therefore be replaced by the more neutral notion of ‘gigabit-ready VHCN’, which would also make it consistent with the terminology used under the Code and by BEREC.