

III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

**580TH PLENARY SESSION OF THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE,
12.7.2023–13.7.2023****Opinion of the European Economic and Social Committee on ‘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)’****(COM(2023) 94 final — 2023/0046 (COD))**

(2023/C 349/18)

Rapporteur: **Maurizio MENSI**

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Legal basis	Article 114 and 304 of the Treaty on the Functioning of the European Union
Section responsible	Transport, Energy, Infrastructure and the Information Society
Adopted in section	26.6.2023
Adopted at plenary	12.7.2023
Plenary session No	580
Outcome of vote (for/against/abstentions)	173/1/1

1. Conclusions and recommendations

1.1. The EESC welcomes the Commission’s proposal for a regulation (the ‘GIA — Gigabit Infrastructure Act’) and endorses its objectives and content.

1.2. In order to achieve the objectives set out in the GIA, the EESC underlines the importance of fast, effective and simplified procedures, together with appropriate terms, conditions and prices, which can be applied everywhere in a consistent manner, throughout the EU. In this regard, specific Commission guidelines would be particularly useful.

1.3. The EESC recognises that the sharing of existing infrastructure is crucial to achieving the goals of the EU Digital Decade 2030, and also emphasises the importance of ensuring the security and robustness of networks and their protection. Reaching the EU’s connectivity targets requires a comprehensive strategy that combines the latest technologies with resilient, autonomous, and secure supply chains. To this end, the GIA should encourage network providers to choose technology components that guarantee a high level of digital security, reduce the risk of network interruptions and adequately address this eventuality.

1.4. The EESC considers it important that Member States have the option of maintaining or introducing EU law-compliant measures that go beyond the minimum requirements set by the GIA, as expressly stated in Recital 11 of the GIA.

1.5. The EESC believes that the deployment of very high-capacity networks (VHCN) and gigabit connectivity is crucial for development and socioeconomic cohesion, as it is an essential factor for the equal economic development of SMEs and professional services, of digital workplaces and of the provision of electronic services in remote areas.

1.6. The EESC believes that the single information points (SIPs) on minimal information on physical infrastructure, which owners of public infrastructure have to provide, should be integrated and linked to other databases which are already available at national level, so as to avoid duplication and save costs.

1.7. The EESC believes that streamlining and digitising the licensing process is an important element in the deployment of ECNs; however, making it compulsory to provide for a silence-consent for the rights of way may not be in line with the principle of proportionality and may be detrimental to the right to property, as set out in Articles 17 and 47 of the Charter of Fundamental Rights of the European Union.

1.8. The EESC believes that building the infrastructure quickly, coordinating the civil works, creating synergies between the various network operators and jointly using the existing physical infrastructure helps to save investment by reducing the environmental burden by avoiding further engineering works and thus helping to achieve environmental objectives.

1.9. The EESC considers that the proposal should specify verifiable measures and actions that will ensure balanced development and equal access to VHCN, to avoid widening the gap between countries and regions with different development speeds and capacities, in line with the Declaration on Digital Rights and Principles, and everyone in the EU would be ensured access to high-quality connectivity, with available internet access, including those with low income.

2. Background

2.1. Deploying very-high capacity networks, including fibre and 5G, is a strategic priority at EU level, as part of efforts to achieve the EU's strategic objectives and digital targets by 2030. Access to VHCN is essential for a wide range of innovative applications, which have the potential to transform and help future-proof many sectors of the EU economy such as commerce, automotive, manufacturing, healthcare, transport, agriculture and utilities.

2.2. Among the initiatives launched to remove obstacles and boost the deployment of VHCN, the European Commission introduced the Broadband Cost Reduction Directive ('BCRD')⁽¹⁾ in 2014 to facilitate and incentivise network roll-out by lowering deployment costs through harmonised measures at EU level. However, 8 years after its entry into force, the BCRD is still far from attaining its objectives. The need to revisit the BCRD is well reflected in the Commission's 2018 report on its implementation as well as in contributions from key stakeholders to the public consultation on the BCRD, launched by the Commission in December 2020. It emerged from this consultation that only 20 % of respondents considered the BCRD effective in facilitating the roll-out of high-speed electronic communications networks at a lower cost, and only 11 % considered that it reduced the time involved in and cost of permit-granting.

2.3. The BCRD has only partly achieved its objectives to increase broadband coverage. In fact, although the percentage of households covered by a 30 Mbps internet speed has increased from 58,1 % in 2013 to 90 % in 2022 according to the Digital Economy and Society Index (DESI), the directive has been implemented unevenly across different Member States, with sometimes diverging interpretations.

⁽¹⁾ Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks (OJ L 155/1, 23.5.2014, p. 1).

2.4. Aware of the need to improve the BCRD's effectiveness, the Commission initiated a revision process and proposed a regulation (the GIA). The GIA aims to address the shortcomings of the BCRD and contribute to the cost-efficient and timely deployment of the VHCNs needed to ensure that the EU meets its objectives and digital targets by 2030.

2.5. The proposal is based on the Connectivity Toolbox recommendation adopted in September 2020 to respond to the growing connectivity needs triggered by the COVID-19 pandemic, with the aim of reducing the roll-out costs of gigabit networks and ensuring the fast deployment of radio spectrum for 5G. To this end, in March 2021, the Member States identified 39 best practices (22 of which concerned reducing roll-out costs) to be included in the Connectivity Toolbox.

2.6. According to the European Commission, the GIA was designed to improve connectivity in the EU, encourage innovation, and incentivise investments. It will help accelerate the deployment of the physical infrastructure used for gigabit networks by strengthening the coordination of civil works between network operators, which represents up to 70 % of network roll-out costs. It also aims to streamline the administrative procedures for the roll-out of new networks by improving access to physical infrastructure and transparency on planned civil works, as well as by ensuring clearer conditions for access to physical infrastructure (including in-building infrastructure), by speeding-up and digitalising the procedures for granting permits, the requests for which are to receive a response within 15 days and are to be deemed tacitly approved within 4 months from receipt.

3. General comments

3.1. The EESC welcomes the Commission's objective to adapt the BCRD to recent and current technological, market and regulatory developments and to foster a more efficient and rapid deployment of more sustainable networks, ensuring alignment with the European Electronic Communications Code (EECC)⁽²⁾ and contributing to greening the information and communications technology sector as part of the European Green Deal.

3.2. The EESC appreciates the decision to use a regulation as the legal instrument, rather than a directive, due to the risks of delays and inconsistencies in national transposition processes with the latter. A regulation ensures uniformity and limits fragmentation of national laws, which is crucial for achieving the Commission's ambitious connectivity targets by 2030. A directive would probably not be applicable until after the deadline, and thus fail to meet the Commission's objective of creating a favourable legal framework quickly. A delay in the simplification of the roll-out authorisation process could also jeopardise development of the digital single market. The latest developments in the digital sector have the potential to take internal market integration to a new level with the emergence of players operating across borders, which will stimulate investments.

3.3. The low and inconsistent use of the BCRD, as well as its lack of guidance, have led to fragmented national laws and regulatory uncertainty. This in turn created barriers to invest and operate across borders, and raised obstacles for companies seeking to reach economies of scale at EU level and thus reap the benefits of the EU single market. As a consequence, there is a need for greater harmonisation, in order to promote the development of cross-border activities in this sector and avoid a two-speed Europe.

3.4. Essentially, the measures in the proposal aim to: improve coordination across sectors; simplify and speed up procedures for granting permits; make the procedure for accessing information on existing infrastructure and planned civil works, as well as for submitting permit requests, fully digital; simplify the reuse of public infrastructure and deployment of network infrastructure for operators; prepare for innovation so that all new buildings and buildings that undergo major renovation are equipped with fibre and fibre-ready infrastructure; and contribute to sustainability by reducing the environmental impact of electronic communications networks through promoting infrastructure-sharing and the deployment of more efficient technologies, the reuse of existing infrastructure and better coordination of civil works.

3.5. Operators will be able to submit permit requests and access all the information needed about existing infrastructure and planned civil works digitally. The EU believes that this will enable operators to deploy networks at lower costs; according to the impact assessment, this involves a saving of EUR 4,5 billion, with a reduction in public subsidies of EUR 2,4 billion.

⁽²⁾ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321/36, 17.12.2018, p. 36).

3.6. The definitions within the proposal have also been widened compared to the BCRD. The proposal applies to access-granting network operators to include also providers of associated facilities such as ducts, masts and poles and physical infrastructure to include infrastructure owned by public institutions such as local authorities, and include buildings and entrances to buildings, and any other asset, including street furniture such as lamp posts, street signs, traffic lights, billboards, bus and tram stops and metro stations.

3.7. The proposal introduces new measures to increase the transparency of existing physical infrastructure. For example, it requires owners of public infrastructure to make minimum information on physical infrastructure available through so-called single information points (SIPs). Moreover, it sets out more stringent rules on the coordination of planned civil works, as already provided for by the BCRD, but considerably expanded in terms of scope and application here. For example, the information on civil works required under the proposal must be made available in digital format by the network provider via a SIP at least 3 months before the first permit request. In this respect, as databases containing this information are already available in many EU countries, the EESC believes that the SIP should be integrated and linked to other databases, so as to avoid duplication and save costs.

3.8. The proposal also includes measures concerning permit procedures, which must be standardised at national level and made fully accessible through the introduction of tacit approval, which is deemed to have occurred 4 months after submitting a request. In addition, a 'fibre-ready' label is provided for in order to verify whether or not a building meets the requirements for the easy installation of a very-high capacity network (VHCN) such as fibre, which is to be a condition for issuing building permits for new buildings. Nevertheless, the EESC stresses that it would be important to bring VHCN to those buildings, in order to exploit their full potential and make the best use of the investments made.

3.9. The EESC considers it important that Member States have the option of maintaining or introducing EU law-compliant measures that go beyond the minimum requirements set by the GIA, as expressly stated in Recital 11, which rightly states that this regulation does not prevent the adoption of national measures in accordance with EU law aimed at promoting the joint use of existing physical infrastructure or enabling the more efficient deployment of new physical infrastructure, complementing the rights and obligations under the GIA.

4. Specific comments

4.1. The proposal is in line with the European Electronic Communications Code that entered into force in December 2020, which has updated the EU's regulatory framework on electronic communications, and contributes to the pursuit of its targets as regards incentivising investments in advanced connectivity networks. While the Code mainly focuses on improving competition, contains requirements for businesses with significant market power and concerns not only physical infrastructure but also electronic communications networks such as fibre cables, the main purpose of the GIA is to remove the barriers to network roll-out, considering current technological, market and regulatory developments.

4.2. In order to achieve the objectives set out in the GIA, the EESC welcomes the text alignment with the definitions of the Code and underlines that the availability of fast, effective and simplified procedures would be fundamental, together with appropriate terms, conditions and prices that can be applied everywhere in a consistent manner throughout the EU. The EESC considers that in this regard Commission guidelines would be particularly useful.

4.3. In line with the goal set by the EU Digital Decade 2030, which states that, by 2030, all European households should be covered by gigabit and fast mobile networks, and unlike the BCRD the proposal for a regulation promotes the roll-out of VHCN with access obligations for owners of physical infrastructure, regardless of their market position. The EESC supports the extension of the scope, which enables all entities providing infrastructure to benefit from the speedy permit procedures resulting from the GIA. However, it emphasises the importance of ensuring that the regulatory framework is comprehensive enough to cater to the diverse needs of all stakeholders involved in the deployment of VHCNs across the EU.

4.4. The EESC recognises that the sharing of existing infrastructure is crucial to achieving the goals of the EU Digital Decade 2030, and also emphasises the importance of ensuring the security and robustness of networks and their protection. Achieving the EU's connectivity targets requires a comprehensive strategy that combines the latest technologies with a resilient, autonomous, and secure supply chains. This is to prevent service interruptions resulting from failures or cyber attacks. To this end, the GIA should encourage network providers to choose technology components that guarantee a high level of digital security, reduce the risk of network interruptions and adequately address this eventuality. The

robustness, resilience and cybersecurity of the network is crucial for the effectiveness of the objectives pursued by the GIA, in line with the ongoing EU regulatory framework and relevant aspects, also in the perspective of any future EU actions on the subject, to be included in the Commission's new mandate from 2024.

4.5. The EESC emphasises that, together with fast, effective and simplified procedures, appropriate terms, conditions and prices are important elements of access to infrastructure. In this regard, since it is necessary to ensure efficiency in the system, for example by avoiding excessively high prices that would have the effect of discouraging the deployment of VHCN, the EESC believes that the Commission should adopt specific guidelines.

4.6. The EESC believes that streamlining and digitising the licensing process is an important element in the deployment of ECNs. However, the EESC considers that making it compulsory to provide for a silence-consent for the rights of way may not be in line with the principle of proportionality and may be detrimental to the right to property, as set out in Articles 17 and 47 of the Charter of Fundamental Rights of the European Union.

4.7. The EESC believes that building the infrastructure quickly, coordinating the civil works, creating synergies between the various network operators and jointly using the existing physical infrastructure helps to save investment by reducing the environmental burden by avoiding further engineering works and thus helping to achieve environmental objectives.

4.8. The EESC believes that the deployment of high-speed networks is crucial for development and socioeconomic cohesion. In this regard, it considers that the proposal should specify verifiable measures and actions that will ensure balanced development and equal access to VHCN, to avoid widening the gap between countries and regions with different development speeds and capacities, in line with the Declaration on Digital Rights and Principles ⁽³⁾, according to which all market players benefiting from the digital transformation should assume their social responsibilities and make a fair and proportionate contribution to the costs of public goods, services and infrastructure and everyone in the EU would be ensured access to high-quality connectivity, with available internet access, including those with low income ⁽⁴⁾.

Brussels, 12 July 2023.

The President
of the European Economic and Social Committee
Oliver RÖPKE

⁽³⁾ European Declaration on Digital Rights and Principles for the Digital Decade (OJ C 23, 23.01.2023, p. 1).

⁽⁴⁾ Chapter II, point 3 on 'Connectivity', European Declaration on Digital Rights and Principles for the Digital Decade.