

## I

(Legislative acts)

## DIRECTIVES

**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****(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 <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(3)</sup>,

Whereas:

- (1) The digital economy is changing the internal market profoundly. With its innovation, speed and reach across borders it has the potential to take internal market integration to a new level. The Union's vision is that of 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 as well as the private and public sectors must have the opportunity to be part of the digital economy.
- (2) Acknowledging the importance of high-speed broadband roll-out, Member States have endorsed the ambitious broadband targets set out in the Communication from the Commission entitled 'The Digital Agenda for Europe — Driving European growth digitally' ('the Digital Agenda'), namely to bring basic broadband to all Europeans by 2013, and to ensure that, by 2020, all Europeans have access to much higher internet speeds of above 30 Mbps and 50 % or more of Union households subscribe to internet connections above 100 Mbps.
- (3) Given the rapid evolution of technologies, the exponential growth in broadband traffic and the increasing demand for e-services, the targets laid down in the Digital Agenda should be considered to be an absolute minimum and the Union should aim for more ambitious broadband targets in order to achieve more growth, competitiveness and productivity. In the context of the review of this Directive, the Commission should assess whether and how this Directive could further contribute to that aim.

<sup>(1)</sup> OJ C 327, 12.11.2013, p. 102.

<sup>(2)</sup> OJ C 280, 27.9.2013, p. 50.

<sup>(3)</sup> Position of the European Parliament of 15 April 2014 (not yet published in the Official Journal) and decision of the Council of 8 May 2014.

- (4) 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 the reduction of administrative burdens. In that respect, significant upfront investments need to be made by Member States in order to enable the sharing of physical infrastructure. Having regard to the Digital Agenda targets, while at the same time acknowledging the significant reduction of financial resources dedicated to broadband under the Connecting Europe Facility established by Regulation (EU) No 1316/2013 of the European Parliament and of the Council<sup>(1)</sup>, Member States should be able, for the purposes of attaining the objectives of this Directive, to use Union funding available in accordance with applicable Union provisions.
- (5) Reducing the costs of deploying high-speed electronic communications networks would also contribute to achieving the digitisation of the public sector, allowing a digital leverage effect on all sectors of the economy, in addition to the reduction in costs for public administrations and increased efficiency of services provided to citizens.
- (6) Taking into account the need for action at Union level to provide better broadband coverage, including by reducing the cost of high-speed broadband infrastructure as reflected by the Conclusions of the European Council of 13/14 December 2012, the Communication from the Commission entitled 'Single Market Act II' stresses the need for additional efforts in order to achieve quickly the objectives laid down in the Digital Agenda by, inter alia, addressing the high-speed network investment challenge.
- (7) The roll-out of high-speed fixed and wireless electronic communications networks across the Union requires substantial investments, a significant proportion of which is represented by the cost of civil engineering works. Limiting some of the cost-intensive civil engineering works would make broadband roll-out more effective.
- (8) A major part of those costs can be attributed to inefficiencies in the roll-out 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 coordination of civil works, burdensome administrative permit granting procedures, and bottlenecks concerning in-building deployment of networks, which lead to high financial barriers, in particular in rural areas.
- (9) 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 ensuring a fast and extensive deployment of high-speed electronic communications networks while maintaining effective competition, without adversely affecting the safety, security and smooth operation of the existing public infrastructure.
- (10) Some Member States have adopted measures intended to reduce the costs of broadband roll-out. However those measures remain scarce and scattered. Scaling up those measures across the Union could significantly contribute to the establishment of a digital single market. 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 an internal 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 roll-out process, and across sectors, in order to achieve a coherent and significant impact.
- (11) This Directive aims at laying down some minimum rights and obligations applicable across the Union in order to facilitate the roll-out 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.
- (12) In the light of the *lex specialis* principle, when more specific regulatory measures in conformity with Union law apply, those should prevail over the minimum rights and obligations provided for in this Directive. Therefore this

<sup>(1)</sup> Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010 (OJ L 348, 20.12.2013, p. 129).

Directive should be without prejudice to the Union regulatory framework for electronic communications set out in Directive 2002/21/EC of the European Parliament and of the Council <sup>(1)</sup> as well as Directive 2002/19/EC of the European Parliament and of the Council <sup>(2)</sup>, Directive 2002/20/EC of the European Parliament and of the Council <sup>(3)</sup>, Directive 2002/22/EC of the European Parliament and of the Council <sup>(4)</sup> and Commission Directive 2002/77/EC <sup>(5)</sup>, including national measures adopted pursuant to that regulatory framework, such as specific symmetric or asymmetric regulatory measures.

- (13) 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 Directive should apply not only to public communications network providers but to any owner or holder of rights to use, in the latter case without prejudice to any third party's property rights, 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 and drainage systems, heating and transport services.
- (14) With a view to improving the deployment of high-speed electronic communications networks in the internal market, this Directive should lay down rights for public communications network providers to access physical infrastructure irrespective of its location under fair and reasonable terms consistent with the normal exercise of property rights. The obligation to give access to the physical infrastructure should be without prejudice to the rights of the owner of the land or of the building in which the infrastructure is located.
- (15) In view of their low degree of differentiation, the physical facilities of a network can often host a wide range of electronic communications network elements at the same time, 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, such as in the case of dark fibre, can in principle be used to accommodate electronic communications cables, equipment or any other element of electronic communications networks, regardless of its actual use or its ownership, in the absence of any security concerns or prejudice to the future business interests of the owner of the infrastructure. The physical infrastructure of public communications networks can in principle also be used to accommodate elements of other networks, and therefore Member States may choose to apply the principle of reciprocity in appropriate cases, and allow public communications network operators to offer access to their networks for the deployment of other networks. 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 to achieving the targets of the Digital Agenda at the same time.
- (16) While this Directive should be without prejudice to any specific safeguard needed to ensure safety and public health, the security and integrity of the networks, in particular that of critical infrastructure, and to ensure that the main service provided by the network operator is not affected, in particular in networks used for the provision of water intended for human consumption, general rules in national legislation prohibiting network operators from negotiating access to physical infrastructures by electronic communications network providers could prevent the establishment of a market for access to physical infrastructures. Such general rules should therefore be abolished. At the same time, the measures set out in this Directive should be without prejudice to the possibility for Member States to render the provision of infrastructure access by utilities operators more attractive by excluding revenues stemming from that service from the basis for the calculation of end-user tariffs for their main activity or activities, in accordance with applicable Union law.

<sup>(1)</sup> Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108, 24.4.2002, p. 33).

<sup>(2)</sup> 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) (OJ L 108, 24.4.2002, p. 7).

<sup>(3)</sup> 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) (OJ L 108, 24.4.2002, p. 21).

<sup>(4)</sup> 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) (OJ L 108, 24.4.2002, p. 51).

<sup>(5)</sup> Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services (OJ L 249, 17.9.2002, p. 21).

- (17) A network operator may refuse access to specific physical infrastructures for objective reasons. In particular, a physical infrastructure may not be technically suitable due to specific circumstances concerning infrastructures for which access has been requested, such as lack of currently available space or due to future needs for space which are sufficiently demonstrated, for instance by publicly available investment plans. Similarly, in specific circumstances, sharing the infrastructure may jeopardise safety or public health, network integrity and security, including that of critical infrastructure, 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 Directive.
- (18) Where undertakings providing or authorised to provide public communications networks request access in a specified area, network operators should make an offer for the shared use of their facilities under fair and reasonable terms and conditions, including price, unless access is refused for objective reasons. Depending on the 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 safety, 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; the ability to deliver or provide infrastructure capacity to meet public service obligations; any constraints stemming from national provisions aiming at protecting the environment, public health, public security or to meet town and country planning objectives.
- (19) In the event of a disagreement during the commercial negotiation on technical and commercial terms and conditions, each party should be able to call on a dispute settlement body at national level to impose a solution on the parties, in order to avoid unjustified refusals to deal or the imposition of unreasonable conditions. When determining prices for granting access, the dispute settlement body should ensure that the access provider has a fair opportunity to recover its costs incurred in providing access to its physical infrastructure, taking into account specific national conditions and any tariff structures put in place to provide a fair opportunity for cost recovery taking into account any previous imposition of remedies by a national regulatory authority. In so doing, the dispute settlement body should also take into account the impact of the requested access on the business plan of the access provider, including the investments made by the access provider to whom the access is requested, in particular investments made in the physical infrastructure to which the access is requested. In the specific case of access to physical infrastructures of public communications network providers, the investments made in such infrastructure may directly contribute to the objectives of the Digital Agenda and downstream competition may be influenced by free-riding. Hence, any access obligation should fully take into account the economic viability of those investments based on their risk profile, any time schedule for the return on investment, any impact of access on downstream competition and consequently on prices and return on investment, any depreciation of the network assets at the time of the access request, any business case underpinning the investment, in particular in the physical infrastructures used for the provision of high-speed electronic communications services, and any possibility previously offered to the access seeker to co-deploy.
- (20) 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 providing or authorised to provide public communications networks should be able to have access to minimum information concerning physical infrastructures available in the area of deployment. Such minimum information should make it possible to assess the potential for using existing infrastructure in a specific area, as well as to reduce damage 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 single information point should allow access to minimum information already available in electronic format subject to limitations to ensure network security and integrity, in particular that of critical infrastructure, or to safeguard legitimate operating and business secrets.
- (21) Without imposing any new mapping obligation on Member States, this Directive should provide that minimum information already collected by public sector bodies and available in electronic format pursuant to national

initiatives as well as Union law, such as Directive 2007/2/EC of the European Parliament and of the Council <sup>(1)</sup>, should be made available, for example by means of a hyperlink, to the single information point. That would allow coordinated access to information on physical infrastructures for public communications network providers while at the same time ensuring the security and integrity of any such information, in particular as concerns national critical infrastructure. The making available of such 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 <sup>(2)</sup>. 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 undertakings providing or authorised to provide public communications networks.

- (22) Where minimum information is not available via the single information point, the possibility of undertakings providing or authorised to provide public communications networks to directly request such specific information from any network operator in the area concerned should nevertheless be ensured. In addition, if the request is reasonable, in particular if needed in view of the possibility to share existing physical infrastructures or to coordinate civil works, undertakings providing or authorised to provide public communications networks should be granted the possibility to make on-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 the protection of confidentiality, and operating and business secrets. Advanced transparency of planned civil works by network operators themselves, or via single information points should be incentivised, in particular for areas of greatest utility, by redirecting authorised operators to such information whenever available.
- (23) Where disputes concerning access to the information on the physical infrastructures with a view to deploying high-speed electronic communications networks arise, the dispute settlement body should be able to resolve such disputes by means of a binding decision. In any case, decisions of such body should be without prejudice to the possibility of any party to refer the case to a court.
- (24) The 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 that reason, regulatory constraints preventing as a general rule the negotiation among network operators with a view to coordinating such works in order to deploy also high-speed electronic communications networks should be prohibited. In the case of civil works not financed by public means, this Directive 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.
- (25) Civil works fully or partially financed by public means should aim to maximise the positive collective outcome, by exploiting the positive externalities of those works across sectors and ensuring equal opportunities to share the available and planned physical infrastructure in view of deploying electronic communications networks. While the main purpose of the civil works financed by public means should not be adversely affected, timely and reasonable requests to coordinate deployment of elements of high-speed electronic communications networks, ensuring for example the coverage of any additional costs, including those caused by delays, and the minimisation of changes to the original plans, should be met by the network operator carrying out directly or indirectly, for example through a sub-contractor, the civil works concerned under proportionate, non-discriminatory and transparent terms. Without prejudice to applicable State aid rules, Member States should be able to provide rules on apportioning the costs associated with the coordinated deployment. Specific settlement procedures should be available to ensure the rapid resolution of disputes concerning the negotiation of those coordination agreements under proportionate, fair and non-discriminatory 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, with a view to 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.

<sup>(1)</sup> 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) (OJ L 108, 25.4.2007, p. 1).

<sup>(2)</sup> Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information (OJ L 345, 31.12.2003, p. 90).

- (26) 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, all relevant information on the procedures and general conditions applicable to civil works should be available via the single information point. This could reduce complexity and increase efficiency and transparency, in particular for new entrants or smaller operators not active in that area. Moreover, Member States should be able to provide for the right of undertakings providing or authorised to provide public communications networks to submit their permit request via a single contact point.
- (27) To ensure that permit granting procedures do not act as barriers to investment, and that they do not have an adverse effect on the internal market, Member States should ensure that a decision on whether or not to grant permit requests concerning the deployment of electronic communications networks or new network elements should in any case be made available at the latest within four 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 according to the applicable legal provisions. Where appropriate, Member States should provide for the right for providers that suffer damage due to the delay of a competent authority to grant permits within the applicable deadlines to receive compensation.
- (28) In order to ensure that such permits granting procedures are completed within reasonable deadlines, Member States could consider establishing 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 within their competence, on the basis of objective, transparent, non-discriminatory and proportionate criteria and conditions. That should be without prejudice to any measure adopted by the Member States exempting certain elements of electronic communications networks, whether passive or active, from permit granting.
- (29) The achievement of the Digital Agenda targets requires that the infrastructure roll-out be brought close to the end-user's location, while fully respecting the principle of proportionality as regards any limitation on to the right to property in view of the general interest pursued. The 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. Given that providing for mini-ducts during the construction of a 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 buildings or buildings subject to major renovation 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 networks, new multi-dwelling buildings and multi-dwelling buildings subject to major renovation should be equipped with an access point, by which the provider may access the in-building infrastructure. Moreover, building developers should foresee that empty ducts are provided from every dwelling to the access point, located in or outside the multi-dwelling 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 equipping a building with high-speed-ready in-building physical infrastructure or an access point or where so equipping the building would be disproportionate for other economic, urban heritage conservation or environmental reasons, such as for specific categories of monuments.
- (30) In order to help prospective buyers and tenants identify buildings that are equipped with high-speed-ready in-building physical infrastructure and that therefore have considerable cost-saving potential, and in order to promote the high-speed readiness of buildings, Member States should be able to develop a voluntary 'broadband-ready' label for buildings equipped with such infrastructure and an access point in accordance with this Directive.
- (31) When public communications network providers deploy high-speed electronic communications networks in a specific area, there are significant economies of scale if they can terminate their network to the building access point, irrespective of whether a subscriber has expressed explicit interest for the service at that moment in time, but provided that the impact on private property is minimised, by using existing physical infrastructure and restoring the affected area. Once the network is terminated at the access 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. That objective is equally fulfilled when the building itself is

already equipped with a high-speed electronic communications network to which access is provided to any public communications network provider who has an active subscriber in the building on transparent, proportionate and non-discriminatory terms and conditions. That may in particular be the case in Member States which have taken measures on the basis of Article 12 of Directive 2002/21/EC.

- (32) New buildings should be equipped with high-speed-ready in-building infrastructure and, in the case of multi-dwelling buildings, with an access point. Member States should have a degree of flexibility to achieve this aim. In that respect, this Directive does not seek to harmonise rules on related costs, including on the recovery of costs of equipping buildings with high-speed-ready in-building physical infrastructure and an access point.
- (33) 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 providing high-speed electronic communications networks to a subscriber, any public communications network provider should have the right to terminate its network to a private premise at its own costs, provided that the impact on private property is minimised, for example, if possible, by reusing the existing physical infrastructure available in the building or ensuring full restoration of the affected areas.
- (34) In line with the principle of subsidiarity, this Directive should be without prejudice to the possibility of Member States to allocate the regulatory tasks provided for to the authorities best 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 Directive.
- (35) The designated national dispute settlement body should ensure impartiality and independence vis-à-vis the parties involved and should have the appropriate competences and resources.
- (36) Appropriate, effective, proportionate and dissuasive penalties should be provided for by Member States in the event of lack of compliance with the national measures adopted pursuant to this Directive.
- (37) In order to ensure the effectiveness of the single information points provided for by this Directive, Member States should ensure adequate resources as well as the availability of relevant information concerning a specific area at the single information points at an optimal level of aggregation where valuable efficiencies may be ensured in view of the tasks assigned, including at the local cadastre. In that regard, Member States could 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 the European Parliament and of the Council<sup>(1)</sup>, with a view to building on existing structures and maximising the benefits for end-users.
- (38) Since the objectives of this Directive 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 but can rather, 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 on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (39) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and in particular 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 Directive has to be applied by the Member States in accordance with those rights and principles,

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

#### **Subject matter and scope**

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

<sup>(1)</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).

2. This Directive establishes minimum requirements relating to civil works and physical infrastructure, with a view to approximating certain aspects of the laws, regulations and administrative provisions of the Member States in those areas.
3. Member States may maintain or introduce measures in conformity with Union law which go beyond the minimum requirements established by this Directive with a view to better achieving the aim referred to in paragraph 1.
4. If any provision of this Directive conflicts with a provision of Directive 2002/21/EC, Directive 2002/19/EC, Directive 2002/20/EC, Directive 2002/22/EC or Directive 2002/77/EC, the relevant provision of those Directives shall prevail.

## Article 2

### Definitions

For the purposes of this Directive, the definitions set out in Directive 2002/21/EC apply.

The following definitions also apply:

- (1) 'network operator' means an undertaking providing or authorised to provide public communications networks as well as an undertaking providing a physical infrastructure intended to provide:
  - (a) a service of production, transport or distribution of:
    - (i) gas;
    - (ii) electricity, including public lighting;
    - (iii) heating;
    - (iv) water, including disposal or treatment of waste water and sewage, and drainage systems;
  - (b) transport services, including railways, roads, ports and airports;
- (2) 'physical infrastructure' means any element of a network which is intended to host other elements of a network without becoming itself an active element of the network, such as pipes, masts, ducts, inspection chambers, manholes, cabinets, buildings or entries to buildings, antenna installations, towers and poles; cables, including dark fibre, as well as elements of networks used for the provision of water intended for human consumption, as defined in point 1 of Article 2 of Council Directive 98/83/EC<sup>(1)</sup> are not physical infrastructure within the meaning of this Directive;
- (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' means 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) 'bodies governed by public law' means bodies that have all of the following characteristics:
  - (a) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
  - (b) they have legal personality; and
  - (c) they are financed, in full or for the most part, by the State, or regional or local authorities, or by other bodies governed by public law; or are subject to management supervision by those authorities or bodies; or have 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 or installations 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 access point with the network termination point;

<sup>(1)</sup> Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (OJ L 330, 5.12.1998, p. 32).



- (8) 'high-speed-ready in-building physical infrastructure' means in-building physical infrastructure intended to host elements or enable delivery 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 entire in-building physical infrastructure or a significant part thereof, and requiring a building permit;
- (10) 'permit' means an explicit or implicit decision of a competent authority following any procedure under which an undertaking is required to take steps in order to legally carry out building or civil engineering works;
- (11) 'access point' means a physical point, located inside or outside the building, accessible to undertakings providing or authorised to provide public communications networks, where connection to the high-speed-ready in-building physical infrastructure is made available.

### Article 3

#### Access to existing physical infrastructure

1. Member States shall ensure that every network operator has the right to offer to undertakings providing or authorised to provide electronic communications networks access to its physical infrastructure with a view to deploying elements of high-speed electronic communications networks. Reciprocally, Member States may provide for the right of public communications network operators to offer access to their physical infrastructure for the purpose of deploying networks other than electronic communications networks.
2. Member States shall ensure that, upon written request of an undertaking providing or authorised to provide public communications networks, any network operator has the obligation to meet all reasonable requests for access to its physical infrastructure under fair and reasonable terms and conditions, including price, with a view to deploying elements of high-speed electronic communications networks. Such written request shall specify the elements of the project for which the access is requested, including a specific time frame.
3. Member States shall require that every refusal of access be based on objective, transparent, and proportionate criteria, such as:
  - (a) the technical suitability of the physical infrastructure to which access has been requested to host any of the elements of high-speed electronic communications networks referred to in paragraph 2;
  - (b) availability of space to host the elements of high-speed electronic communications networks referred to in paragraph 2, including the network operator's future needs for space that are sufficiently demonstrated;
  - (c) safety and public health concerns;
  - (d) integrity and security of any network, in particular of critical national infrastructure;
  - (e) the risk of serious interferences of the planned electronic communications services with the provision of other services over the same physical infrastructure;
  - (f) the availability of viable alternative means of wholesale physical network infrastructure access provided by the network operator and suitable for the provision of high-speed electronic communications networks, provided that such access is offered under fair and reasonable terms and conditions.

Member States shall ensure that the network operator states the reasons for the refusal within two months from the date of the receipt of the complete 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 date of receipt of the request for access, Member States shall ensure that either party is entitled to refer the issue to the competent national dispute settlement body.
5. Member States shall require the national dispute settlement body referred to in paragraph 4 to issue, taking full account of the principle of proportionality, a binding decision to resolve the dispute initiated pursuant to paragraph 4, including the setting of fair and reasonable terms and conditions, including price where appropriate.

The national dispute settlement body shall resolve the dispute, within the shortest possible time frame and in any case within four months from the date of the receipt of the complete request except in exceptional circumstances, without prejudice to the possibility of any party to refer the case to a court.

Where the dispute relates to access to the infrastructure of an electronic communications network provider and the national dispute settlement body is the national regulatory authority, it shall, where appropriate, take into account the objectives set out in Article 8 of Directive 2002/21/EC. Any price set by the dispute settlement body shall ensure that the access provider has a fair opportunity to recover its costs and shall take into account the impact of the requested access on the business plan of the access provider, including the investments made by the network operator to whom access is requested, in particular in the physical infrastructures used for the provision of high-speed electronic communications services.

6. This Article shall be without prejudice to the right to property of the owner of the physical infrastructure in cases where the network operator is not the owner, and to the right to property of any other third parties, such as landowners and private property owners.

#### Article 4

### Transparency concerning physical infrastructure

1. Member States shall ensure that, in order to request access to physical infrastructure in accordance with Article 3(2), every undertaking providing or authorised to provide public communications networks has the right to access, upon request, the following minimum information concerning the existing physical infrastructure of any network operator:

- (a) location, and route;
- (b) type and current use of the infrastructure; and
- (c) a contact point.

Member States shall ensure that the undertaking requesting access specifies the area in which it envisages deploying elements of high-speed electronic communications networks.

Member States may allow access to the minimum information to be limited only if necessary in view of the security of the networks and their integrity, national security, public health or safety, confidentiality or operating and business secrets.

2. Member States may require every public sector body holding, in electronic format, by reason of its tasks elements of the minimum information referred to in paragraph 1 concerning the physical infrastructure of a network operator to make it available via the single information point by electronic means before 1 January 2017, and Member States shall require such public sector bodies to make it available, upon request, to undertakings providing or authorised to provide public communications networks, without prejudice to limitations pursuant to paragraph 1. Any update to that information and any new element of minimum information referred to in paragraph 1 received by the public sector body shall be made available to the single information point within two months from the date of its receipt. That period may be extended by a maximum of one month, where this is required to guarantee the reliability of the information provided.

3. Minimum information made available to a single information point pursuant to paragraph 2 shall be accessible promptly, via the single information point, in electronic format and under proportionate, non-discriminatory and transparent terms. Member States shall ensure that access to the minimum information pursuant to this paragraph is made available via the single information point by 1 January 2017.

4. Where the minimum information referred to in paragraph 1 is not available via the single information point, Member States shall require network operators to provide access to such information upon the specific written request by an undertaking providing or authorised to provide public communications networks. Such request shall specify the area envisaged for the deployment of elements of high-speed electronic communications networks. Access to information shall be granted within two months from the date of receipt of the written request under proportionate, non-discriminatory and transparent terms, without prejudice to the limitations pursuant to paragraph 1.

5. Upon the specific written request of an undertaking providing or authorised to provide public communications networks, Member States shall require network operators to meet reasonable requests for on-site surveys of specific elements of their physical infrastructure. Such request shall specify the elements of the network concerned with a view to deploying elements of high-speed electronic communications networks. On-site surveys of the specified network elements shall be granted under proportionate, non-discriminatory and transparent terms within one month from the date of receipt of the written request, without prejudice to the limitations pursuant to paragraph 1.

6. Member States shall ensure that, in the event of a dispute arising in connection with the rights and obligations provided for in this Article, either party is entitled to refer the dispute to a national dispute settlement body. The 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, except in exceptional circumstances, without prejudice to the possibility of any party to refer the case to a court.

7. 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 for the deployment of high-speed electronic communications networks or in case of critical national infrastructure. Such exemptions shall be duly reasoned. The interested parties shall be given the opportunity to comment on the draft exemptions within a reasonable period. Any such exemption shall be notified to the Commission.

8. Member States shall ensure that the undertakings providing or authorised to provide public communications networks that obtain access to information pursuant to this Article take appropriate measures to ensure respect for confidentiality, and operating and business secrets.

#### Article 5

##### Coordination of civil works

1. Member States shall ensure that every network operator has the right to negotiate agreements concerning the coordination of civil works with undertakings providing or authorised to provide electronic communications networks with a view to deploying elements of high-speed electronic communications networks.

2. Member States shall ensure that every network operator performing directly or indirectly civil works, either fully or partially financed by public means, meets any reasonable request to coordinate civil works on transparent and non-discriminatory terms, made by undertakings providing or authorised to provide public communications networks with a view to deploying elements of high-speed electronic communications networks. Such request shall be met provided that:

- (a) this will not entail any additional costs, including because of additional delays, for the initially envisaged civil works;
- (b) this will not impede control over the coordination of the works; and
- (c) 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.

Member States may provide rules on apportioning the costs associated with the coordination of civil works.

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

4. Member States shall ensure that the national dispute settlement body referred to in paragraph 3 issues, taking full account of the principle of proportionality, a decision to resolve the dispute initiated pursuant to paragraph 3, including the determination of fair and non-discriminatory terms, conditions and charges where appropriate.

The national dispute settlement body shall resolve the dispute within the shortest possible time frame, and in any case within two months from the date of the receipt of the complete request, except in exceptional circumstances, without prejudice to the possibility for 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 importance, such as in terms of value, size or duration, or in the case of critical national infrastructure. Such exemptions shall be duly reasoned. The interested parties shall be given the opportunity to comment on the draft exemptions within a reasonable period. Any such exemption shall be notified to the Commission.

#### Article 6

##### Transparency concerning planned civil works

1. In order to negotiate agreements on coordination of civil works referred to in Article 5, Member States shall require any network operator to make available upon the specific written request of an undertaking providing or authorised to provide public communications networks the following 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; and
- (d) a contact point.

The request of an undertaking providing or authorised to provide public communications networks shall specify the area in which it envisages deploying elements of high-speed electronic communications networks. Within two weeks from the date of the receipt of the written request, network operators shall provide the requested information under proportionate, non-discriminatory and transparent terms. Member States may allow access to the minimum information to be limited only when considered necessary in view of the security of the networks and their integrity, national security, public health or safety, confidentiality or operating and business secrets.

2. The network operator may refuse the request pursuant to paragraph 1 if:
  - (a) it has made the requested information publicly available in electronic format; or
  - (b) access to such information is ensured via the single information point.
3. Member States shall ensure that the network operator makes the requested minimum information referred to in paragraph 1 available via the single information point.
4. Member States shall ensure that, in the event of a dispute arising in connection with the rights and obligations provided for in this Article, either party is entitled to refer it to a national dispute settlement body. The 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, except in exceptional circumstances, 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 or in the case of critical national infrastructure. Such exemptions shall be duly reasoned. The interested parties shall be given the opportunity to comment on the draft exemptions within a reasonable period. Any such exemption shall be notified to the Commission.

#### *Article 7*

##### **Permit-granting procedure**

1. Member States shall ensure that all relevant information concerning the conditions and procedures applicable for granting permits for civil works needed with a view to deploying elements of high-speed electronic communications networks, including any information concerning exemptions applicable to such elements as regards some or all permits required under national law, is available via the single information point.
2. Member States may provide for the right of every undertaking providing or authorised to provide public communications networks to submit, by electronic means via the single information point, applications for permits required for civil works which are needed with a view to deploying elements of high-speed electronic communications networks.
3. Member States shall take the necessary measures, in order to ensure that the competent authorities grant or refuse permits within four months from the date of the receipt of a complete permit 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 or of appeal proceedings. Member States may provide that, exceptionally, in duly justified cases, that deadline may be extended. Any extension shall be the shortest possible in order to grant or refuse the permit. Any refusal shall be duly justified on the basis of objective, transparent, non-discriminatory and proportionate criteria.
4. Member States may ensure that every undertaking providing or authorised to provide public communications networks which has suffered damage as a result of non-compliance with the deadlines applicable under paragraph 3 has the right to receive compensation for the damage suffered, in accordance with national law.

#### *Article 8*

##### **In-building physical infrastructure**

1. Member States shall ensure that all newly constructed buildings at the end-user's location, including elements thereof under joint ownership, for which applications for building permits have been submitted after 31 December 2016, are 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 31 December 2016.

2. Member States shall ensure that all newly constructed multi-dwelling buildings, for which applications for building permits have been submitted after 31 December 2016, are equipped with an access point. 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 31 December 2016.
3. Buildings equipped in accordance with this Article shall be eligible to receive the voluntary 'broadband-ready' label in Member States that have chosen to introduce such a label.
4. Member States may provide for exemptions from the obligations provided for in paragraph 1 and 2 for categories of buildings, in particular single dwellings, or major renovation works in cases in which the fulfilment of those obligations is disproportionate, such as in terms of costs for individual or joint owners or in terms of type of building, such as specific categories of monuments, historic buildings, holiday homes, military buildings or other buildings used for national security purposes. Such exemptions shall be duly reasoned. The interested parties shall be given the opportunity to comment on the draft exemptions within a reasonable period. Any such exemption shall be notified to the Commission.

#### Article 9

##### **Access to in-building physical infrastructure**

1. Member States shall ensure that, subject to the first subparagraph of paragraph 3, every public communications network provider has the right to roll out its network at its own costs, up to the access point.
2. Member States shall ensure that, subject to the first subparagraph of paragraph 3, every public communications network provider has the right to access any existing in-building physical infrastructure with a view to deploying a high-speed electronic communications network if duplication is technically impossible or economically inefficient.
3. Member States shall ensure that any holder of a right to use the access point and the in-building physical infrastructure meets all reasonable requests for access from public communications network providers under fair and non-discriminatory terms and conditions, including price, where appropriate.

Where agreement on access referred to in paragraph 1 or 2 is not achieved within two months from the date of receipt of the formal request for access, Member States shall ensure that each party has the right to refer the issue to the competent national dispute settlement body in order to assess compliance with the requirements provided for in those paragraphs. The 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, except in exceptional circumstances, without prejudice to the possibility of any party to refer the case to a court.

4. Member States may grant exemptions from paragraphs 1 to 3 for buildings where access to an existing network that terminates at the end-user's location and that is suitable for the provision of high-speed electronic communications services is ensured on objective, transparent, proportionate and non-discriminatory terms and conditions.
5. In the absence of available high-speed-ready in-building infrastructure, Member States shall ensure that every public communications network provider has the right to terminate its network at the premises of the subscriber, subject to the agreement of the subscriber, provided that it minimises the impact on the private property of third parties.
6. This Article shall be without prejudice to the right to property of the owner of the access point or the in-building physical infrastructure in cases where the holder of a right to use that infrastructure or access point is not the owner thereof, and to the right to property of other third parties, such as landowners and building owners.

Member States may lay down rules on adequate financial compensation of persons suffering damage as a result of the exercise of the rights provided for in this Article.

#### Article 10

##### **Competent bodies**

1. Member States shall ensure that each of the tasks assigned to the national dispute settlement body is undertaken by one or more competent bodies.
2. The national dispute settlement body appointed by a Member State pursuant to paragraph 1 shall be legally distinct and functionally independent of any network operator. Member States may allow the national dispute settlement body to charge fees to cover the costs of carrying out the tasks assigned to it.

3. Member States shall require that all parties cooperate fully with the national dispute settlement body.
4. Member States shall appoint one or more competent bodies at national, regional or local level to perform the functions of the single information point referred to in Articles 4, 6 and 7. In order to cover the costs of carrying out those functions, Member States may allow for fees to be charged for the use of the single information points.
5. Member States shall notify to the Commission the identity of each competent body in accordance with this Article for carrying out a function under this Directive by 1 July 2016 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 11*

##### **Penalties**

Member States shall lay down rules on penalties applicable to infringements of national measures adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided shall be appropriate, effective, proportionate and dissuasive.

#### *Article 12*

##### **Review**

The Commission shall present a report to the European Parliament and the Council by 1 July 2018 on the implementation of this Directive. The report shall include a summary of the impact of the measures provided by this Directive and an assessment of the progress towards achieving its objectives, including whether and how the Directive could further contribute to achieving more ambitious broadband targets than those set out in the Digital Agenda.

#### *Article 13*

##### **Transposition**

Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 2016. They shall inform the Commission thereof.

They shall apply those measures from 1 July 2016.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

#### *Article 14*

##### **Entry into force**

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

#### *Article 15*

##### **Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 15 May 2014.

*For the European Parliament*

*The President*

M. SCHULZ

*For the Council*

*The President*

D. KOURKOULAS

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