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From:	General Secretariat of the Council
To:	Working Party on Telecommunications And Information Society (Attachés) Working Party on Telecommunications and Information Society
N° prev. doc.:	10960/23
Subject:	Proposal for a Regulation of the European Parliament and of the Council on measures to reduce the cost of deploying gigabit electronic communications networks and repealing Directive 2014/61/EU (Gigabit Infrastructure Act) - Comments from Austria

Delegations will find attached comments from Austria on the above mentioned subject.

Gigabit Infrastructure Act: AT Comments regarding the presidency's 1st compromise text

Austria expresses its appreciation for the work of the presidency and in particular the attempt to adapt the proposal to the different needs of the MS and welcomes the following adaptations:

- Enabling MS to take measures that go beyond the GIA and to provide solutions that better achieve the objectives
- Deletion of EC guidelines in favour of guidelines by MS allowing consideration of national specificities
- Art. 3(2) (c): change the wording from "shall" to "may" so that these very prescriptive conditions are no longer mandatory
- Clarification that Art. 1(4) does not prevent coordination of privately financed civil work
- Extending the deadline of 12 months for providing the minimum information on existing physical infrastructure through the SIP to 18 months
- Compensation in case of non-compliance with deadlines: deletion of Art. 7(11)
- Extending the deadline for dispute settlement bodies to issue a binding decision to resolve a dispute from 1 to 2 months (Art. 11(2)(b))

However, the following points require further consideration and still raise serious concerns:

Art 1: Scope and legal form of the proposal

AT welcomes the opening of the Regulation and the resulting flexibility for the MS but fears that this minimum harmonisation in the form of a directly applicable Regulation will lead to massive legal problems when transposing it into national law, also driven by the still unclear demarcation from the provisions of the EEC. AT therefore continues to be in favour of the more appropriate legal form of a directive.

Art 5: Coordination of civil works

Again, AT would like to point out that the protection of the first provider could easily be circumvented in practice. It would be desirable to clarify how far the coordination obligation does not go. Are general superstructures permissible? It would also be desirable to specify how specific the coordination applicant's build-out plan must be for him to lawfully request coordination. For example, the legal text could be amended to state that a coordination obligation may be unreasonable if the coordination applicant's development plan has not been notified in the SIP.

Art 7 Procedure for granting permits, including rights of way

Even though improvements have been made regarding the SIP and the deadlines, AT continues to express its opposition to automated completeness and **approval fiction** if third-party rights are affected.

AT proposes to amend the text to this effect:

*“The completeness of the application for permits or rights of way shall be determined by the competent authorities within **30 working** days from the receipt of the application. Unless the competent authorities invited the applicant to provide any missing information within that period, the application shall be deemed completed, **provided that this does not adversely affect the rights of third parties.**”*

The easing of the **"tacit approval"** (only after eight instead of four months and a renewed request) is welcomed in principle, but it is nevertheless considered important (at least in the case of "Rights of Way") to delete this provision completely due to the numerous significant disadvantages or at least to exclude the possibility that third party rights could be affected by it.

Austria reserves the right to make further statements on other important points of the draft act in the course of the ongoing negotiations.

Austria looks forward to further constructive discussions and asks for the submitted comments to be taken into account.