

HU comments to GIA steering note wk16953

I. The extent of harmonisation

We agree that it is not justified to include Article 7(1) (line 174) page 141 in Article 1(4) (line 82) page 93 and we do not support the EP text that would require to establish a separate coordination body in the GIA. The development of the rules for permit procedures is the competence of the Member States, the proposed additions limit the competence of the Member States without the resulting increase in efficiency being unclear.

Therefore we support the rejection of the proposals. However, we do not support the optional inclusion of Article 7(11c) (line 188c) page 152 as a final compromise either, as the amendment of the provision becomes meaningless (Member States can create a coordinating body even without the option provided in the regulation).

II. Guidance by the European Commission and implementing act

Regarding Article 3(9) (line 130) page 122

We do not support the Parliament's amendment. In our opinion providing guidance should be kept at the Member States since MS are familiar with the national measures which may differ significantly between the Member States. We see little chance of single practice at the EU level through Commission guidelines, but at the same time, the numerous or different guidelines can cause confusion when applying the GIA. The lack of legal binding force does not change this either. In practice such a guideline is a reference point and a source of continuous debate in case of contradiction between the practices of the Member States and the guideline.

Regarding Article 5(5) (line 162) page 136

Similar to Article 3(9), we do not support the issuance of guidelines, either by BEREC or by the Commission.

Regarding Article 9(6) (line 211) page 162

We do not support providing higher-level guidelines in this case either. The rules of in-building physical infrastructure can differ significantly from one Member State to another, which questions the possibility of creating a useful guideline.

Regarding Article 7(8) (line 185) page 149

We agree with the proposal of the Presidency, and we do not support the Parliament's text.

III. The obligation for owners of private commercial buildings and land owners to give access on fair and reasonable conditions to private commercial buildings and land respectively

Regarding Article 3(1a) (line 112a) page 106

The addition represents a significant change from the current regulatory direction, practically expanding the scope of the regulation, which in our opinion is not justified at this stage of the GIA. In connection with the EP amendment proposal, the examination of justification and proportionality at the Member State level may take a significant amount of time, which may hinder the adoption of the regulation. In our opinion, the goals of the regulation can be ensured for private owners even without the negotiation obligation stipulated in the proposal. The obligation to negotiate does not mean an obligation to provide access, so if the private owner is not interested in providing access, he can reject it even with the obligation to negotiate. Also, if it is beneficial for him to provide access, he will provide it even in the absence of the obligation to negotiate (as is the case in current practice).

Regarding Article 3(1b) (line 112b-112f) page 107-109

Similar to the previous amendment, this addition also means expanding the scope of the regulation, which is not justified at this stage of the creation of the GIA. The amendment proposal leads to a significant restriction of rights related to private property. In addition, practical application problems also arise in connection with lines 112c-112e. The private owner is not able to examine or check the aspects outlined here, which creates an unequal situation during the negotiations and also later during the conclusion of the contract. In connection with the amendment proposal, the examination of justification and proportionality at the Member State level may also take considerable time in this case, which may hinder the adoption of the regulation. Based on all of this, we agree that the amendment proposal should be rejected.

IV. The refusal to access to physical infrastructure in specific cases

Regarding Article 3(3f) (line 123a-123e) page 116-117 we support that Council's position to get closer to EP's position. We agree that a request for access to the physical infrastructure can only be refused if an alternative physical access service is provided. Active access services (eg bitstream access) can create bottlenecks in newly built VHCN networks, so we do not support their inclusion. Nevertheless, we consider the conditions set out in lines 123b-123c-123d in the Parliament's proposal to be unjustified.

We agree that the Presidency should reject the amendment to Article 5(3)2a (line 153a) page 132.

V. Compensation for the damage suffered

We do not agree with the Presidency's proposal to reinstate the compensation provisions, even with the proposed additions. We consider it necessary to keep the development of rules related to compensation strictly within the competence of the Member States. The settlement of damages operates according to different rules in each Member State, which is typically regulated by the civil law, based on several decades of court and law enforcement practices have developed in the individual Member States. Unification of these measures is not justified, since in order to settle these compensation cases, it is always necessary to take into account the national characteristics of the given Member State and the developed practices. If the Member States agree with the Presidency's proposal, then in accordance with Hungarian law, the maximum we can accept is the refund of the procedural fee in case authorities exceed the administrative deadline.

VI. Tacit approval of permits

Regarding Article 7(1) (line 174) page 141 we are flexible with the wordings.

Regarding Article 7(4) (line 177) page 143 we are flexible with the reinstatement of wording.

Regarding Article 7(5) (line 178) page 143 we propose to insist on keeping the original 4-month deadline.

Regarding Article 7(7) (line 184) page 146, we still consider it necessary to delete tacit approval, accordingly, we support to keep the General Approach (option "a").

Regarding Article 7(7) (line 184a) page 147: Although this line is not mentioned in the steering note we recommend its deletion. It seems redundant under Article 1(3) and (4), as this is not marked as a measure where Member States can have stricter rules. We recommend to move this line to the recitals at most.

Regarding Article 7(7a) (line 184b) page 147: We do not agree with its addition, therefore we do not support accepting it. Based on our previous comments: We do not support the automatic renewal of permits regardless of the circumstances. If the permit has expired,

it is necessary to re-examine whether the granting of the permit is still justified based on the circumstances of the case.

The addition in Article 7(7b) (line 184c) page 148 is acceptable for us but we ask the deletion of Commission's guidelines.

Regarding Article 7(8) (line 185) page 149: We do not agree with the Commission issuing delegated acts in this area. We consider it necessary to settle the issue within the competence of the Member States. Accordingly, we support to insist on the Council's position.

Regarding Article 7(11) (line 188a) page 151: We do not consider the addition justified. There is no need for a separate monitoring mechanism in this area, the monitoring options available to the Commission are sufficient. The additional reporting obligations take away additional resources from the authorities implementing the tasks.

Regarding Article 7(11b) (line 188b) page 151: Since we do not support line 188a we do not consider the provision included in line 188b to be justified either, therefore this provision is not necessary either.

Regarding Article 7(11c) (line 188c) page 152: We do not agree with the provision. It unreasonably and unnecessarily interferes with the establishment of Member States' institutions, and moreover, it does not necessarily increase efficiency. We consider this amendment unnecessary.

VII. Deadlines including date of application

As a principle, we do not support the shortening of any deadline, which has already been discussed and agreed with the Member States, without a detailed and specific justification.



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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Telecommunications and Information Society
Subject:	Gigabit Infrastructure Act - HU comments

Delegations will find in Annex the HU comments on the Gigabit Infrastructure Act.