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

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

Comments from NL on steering notes Gigabit Infrastructure Act – January 2024

The Netherlands would like to thank the presidency for preparing the steering notes. In the table in this document the NL provides its reflections on each of the questions posed by the presidency in the steering notes. Any additional comments on specific articles relevant for the trilogue negotiations can also be found in the table below and are marked by [blue text](#).

We would like to highlight the following issues as a matter of high priority for the Netherlands

- The Netherlands is deeply concerned about the proposal of either an implementing or delegated act to grant the European Commission the competence to specify categories of deployment of very high-capacity networks that shall not be subject to any permit-granting procedure (article 7.8). They constitute a serious violation of national and regional competences for spatial and underground planning. For the Netherlands an implementing or delegated act are a red line and insists remaining firm on the GA position.
- The Netherlands strongly opposes any obligation for member states to implement any form of tacit approval. The principle of tacit approval is incompatible with administrative and legal practices in the Netherlands. Obligatory tacit approval is a red line for Netherlands and insists on flexibility for member states. However, the Netherlands supports the ambitious goals set out in the GIA proposal and sees the importance of reaching a quick agreement with the parliament. Therefore, in the spirit of compromise, the Netherlands proposes that the GIA includes an obligation for member states to implement measures that enforce compliancy with the deadlines in article 7 but leave flexibility for member states in how compliancy is enforced. Our suggested alternative wording can be found in the table below.
- The Netherlands is deeply concerned about the EP amendments on the obligations for landowners and owners of private commercial buildings to give access. They constitute a disproportionate infringement of private property rights. Furthermore, the text raises various questions about the scope of the obligation, as well as how it shall work out in practice.

Presidency Steering note	NL Comments
Tacit approval of permits	
Article 7 (1) (line 174) <i>The Presidency will try to make clear to the Parliament that it is not possible in Member States to impose fully consistent procedures due to the division of competences. It is crucial that a balanced wording is found here. The Presidency envisages to find a compromise here that would take into account the concerns previously raised by the Member States.</i>	The NL agrees with the proposal of the Presidency to defend the GA and at the minimum to have Article 7 (1) removed from the list of articles which fall under maximum harmonisation.
Article 7 (4) (line 177) / (178) <i>The Presidency will try to find a suitable wording on this paragraph. The Presidency will try to find the right balance in this, while pointing out that the initial proposal of the Commission was also 4 months. This will be linked to the general discussion on deadlines</i>	The NL agrees with the suggested approach and proposes as a compromise to make the rejection of an application for the competent authorities to be optional instead of mandatory. The NL agrees with the suggested approach to find the right balance and to emphasize that the initial proposal of the Commission was also 4 months. For the NL it is of upmost importance that the deadline to complete a permit application procedure shall not be shorter than 2 months.

Paragraph 7 (lines 184 and following) <i>On this important point, the Presidency is open to suggestions from delegations on the way forward. From the Presidency's perspective, the following approaches could be envisaged:</i> <i>a) Keeping the General Approach (i.e. no tacit approval procedure);</i> <i>b) Accepting the tacit approval procedure only for permits, and only where administrative tacit approval does exist in the national legal system, but rejecting it for rights of way (where the issue of interference with property rights arises);</i> <i>c) Accepting the EP text (i.e tacit approval for both permits and rights of way, except where the principle of administrative tacit approval does not exist in the national legal system).</i>	The NL strongly opposes any obligation for member states to implement any form of tacit approval. It would constitute a significant breach of the competence of local authorities in spatial planning and is a disproportionate measure. Furthermore, the principle of tacit approval is incompatible with administrative and legal practices in the Netherlands. The wording of the EP amendment does not provide a useful exception for these instances. We would like to point out that the obligations coming from the Services Directive, specifically article 13.4, entails a form of tacit approval in the legal systems of all member states. However, the Netherlands supports the ambitious goals set out in the GIA proposal and empathizes with member states that need measures to facilitate faster permit granting procedures to help achieve these goals. Therefore, in the spirit of compromise, the Netherlands proposes that the GIA includes an obligation for member states to implement measures that enforce compliance with the deadlines in article 7 but leave flexibility for member states in how compliance is enforced. Consequently, with the goal of reaching a quick agreement with the parliament, we propose the following alternative wording for article 7(7): <i>In the absence of a response from the competent authority within the deadlines referred to in paragraphs 5 and 6, the Member States shall ensure that:</i> <i>i. the permit shall be deemed to have been granted;</i> <i>ii. a periodic penalty payment is imposed; or</i> <i>iii. any other rules or procedures are laid down to ensure compliance with the deadlines.</i>
(7a) and (7b) (lines 184b and 184c) <i>The Presidency proposes to accept the proposal of the Parliament, if necessary with further clarification in recitals (in line 184c, concerning, the delegated act, this is linked to the discussion on line 185).</i>	The NL in principle agrees with the Presidency's approach to accept the proposal of the Parliament for 184c (taking into account the discussion linked to line 185). However, circumstances in the deployment area may in some instances change during the time the permit is expired. Therefore, authorities should have the flexibility to require an additional procedure for justified

	reasons. NL proposes the following addition to the text of the EP: <i>"...Competent authorities shall renew the permit for a period which shall not exceed the period of validity of the original permit, except in cases where for objectively justified reasons where an additional procedure is required."</i>
Paragraph (11a) (line 188a) <i>In line 188a, The Presidency sees no fundamental issues with this proposal but will propose to reduce the monitoring obligation to one report every two years. We will link this to the general discussion on Commission guidance, as well as the need for flexibility for the Member States.</i>	The NL opposes this EP amendment, since it would entail a significant administrative burden for MS, especially with regards to the monitoring whether the conditions have been met (by hundreds of local governments in the NL).
Paragraph (11b) (line 188b) <i>In line 188b, the Presidency sees no problem in adding the Parliament's text concerning the referral to Article 57 of the Code.</i>	The NL agrees with the position of the Presidency.
Paragraph (11c) (line 188c) <i>In line 188c, we propose to keep the designation of a coordinating body optional by replacing the word "shall" by "may".</i>	The NL agrees with the proposal of the Presidency to keep the designation of a coordinating body optional. The designation of a coordinating body would require considerable resources for the establishment of new governments bodies or for the designation of new tasks to existing bodies. Also, the coordination of procedures related to permit granting are the responsibility of local governments in the NL. The EP's amendment represents a serious infringement of the powers of local authorities in the NL.
The extent of harmonization	
Article 1 (4) (line 82) / Article 7 (1) (line 174) <i>The Presidency proposes to defend the General Approach and at the minimum to have Article 7 (1) removed from the list.</i>	The NL agrees with the proposal of the Presidency to defend the GA and at the minimum to have Article 7 (1) removed from the list.
Article 3 (4) (line 125) / Article 7 (11a) (line 188 (c)) <i>The Presidency proposes to reject the new provisions of the Parliament to make mandatory:</i> <i>the establishment of the coordinating body that ensures that access requests are coordinated and provides legal and technical advice;</i> <i>the establishment by Member States of a body to coordinate the procedures related to permits (new addition of the Parliament) and as a final compromise, could agree to the establishment of these bodies optional but not mandatory.</i>	The NL agrees with the proposal of the Presidency since it would require considerable resources for the establishment of new governments bodies or for the designation of new tasks to existing bodies. Also, the coordination of procedures related to permit granting are the responsibility of local governments in the NL. The EP's mandate represents a serious infringement of the powers of local authorities in the NL.

Guidance by the European Commission and implementing act	
Article 3 (9) (line 130) <i>The Presidency proposes to accept the proposal and wording of the Parliament, acknowledging that the Guidance would have a non-binding nature and would have to allow for sufficient flexibility, taking into account national specificities.</i>	The NL is of the opinion that it should be up to MS to decide to provide guidance. As a compromise the NL can agree with the proposal of the Presidency, on the condition that the guidance is <u>non-binding</u> to MS.
Article 5 (5) (line 162) <i>The Presidency proposes to task BEREC in close cooperation with the Commission with the development of the guidelines, as BEREC has a better understanding of national specificities.</i>	The NL agrees with the Presidency proposal to task BEREC in close cooperation with the Commission with the development of the guidelines, but on the basis that the Guidance would have a non-binding nature and would have to allow for sufficient flexibility, taking into account national specificities.
Article 9 (6) (line 211) <i>The Presidency proposes the following compromise wording:</i> <i>"After having consulted stakeholders, the national dispute settlement bodies and other competent Union bodies or agencies in the relevant sectors as appropriate, the Commission may, in close cooperation, BEREC shall provide guidelines, in close cooperation with the Commission, on the application of this Article and in doing so, shall take into account well-established principles and the distinct situation across Member States. BEREC shall regularly collect and report on the national best practices relating to the access to existing in-building physical infrastructure."</i>	The NL agrees with the proposal of the Presidency but proposes a minor amendment (highlighted in yellow in the text on the left).
Article 7 (8) (line 185) <i>The Presidency proposes not to show any flexibility towards the Parliament on this point and stick to the Council text.</i>	The NL fully agrees with the Presidency not to show any flexibility on this point and stick to the Council text. A proposal to introduce an implementing or delegated act deeply violates national and regional competences for spatial and underground planning.
The obligations for land owners and owners of private commercial buildings to give access to land and commercial buildings respectively at fair and reasonable conditions	
Article 3 (1a) (line 112a) <i>The Presidency doubts whether this addition in the text is supported by sufficient empirical data and would be justified and proportionate. If the Parliament manages to provide sufficient justification and they maintain a strong position on this, the Presidency would suggest to have the MS monitor their national situation and possibly to add a review clause in the text on this.</i>	The NL endorses the expressed doubts of the Presidency whether the new obligation of the EP is supported by sufficient empirical data and would be justified and proportionate and is of the opinion that private property rights in a MS should be respected and that access to land for the construction of physical infrastructure for antennae towers should only be possible at the discretion of the owners of that land.
Article 3 (1b) (line 112b-112f) <i>The Presidency's initial stand would be to refuse this addition to the text because this seems to</i>	The NL agrees with the position of the Presidency that the new obligation of the EP is

be a disproportionate infringement of private property rights	a disproportionate infringement of private property rights. Furthermore, the text raises various questions about the scope of the obligation, as well as how it shall work out in practice. For instance, how should it be determined if a building is not part of a (VHCN?) network, how to determine if no VHCN is deployed in the relevant area (how to distinguish between fixed and mobile VHCN)?
The refusal to access to physical infrastructure in specific cases	
<u>Article 3 (3.f) first subparagraph (lines 123a – 123e)</u> <i>The Presidency proposes to find a suitable common ground between the proposals of the co-legislators, converging towards the Parliament on provisions regarding the access to physical infrastructure. However, the Presidency proposes to reject line 153a.</i>	
Article 3 (6) (line 127) / Article 4 (1) (line 138) / Article 4 (4) (line 144a)	The NL finds it of utmost importance that additional guarantees for the use of public infrastructure need to be included and therefore urges the Presidency to defend the GA which entails the broadened scope of exemptions of public physical infrastructure (all types of public physical infra, instead of only building). Furthermore, these exemptions should also be reflected in the articles where access to minimum information may be limited or refused or shall not apply.
Coordination of civil works	
Article 5 (1) (line 148) / Article 5 (2) (line 149) / Article 6 (1) (line 164)	Regarding the addition of 'public sector bodies' in paragraphs 1 and 2 of Article 5 <u>and</u> subsequently in paragraph 1 in Article 6, The NL opposes these additions since they can lead to confusion about the scope of the obligation to coordinate of civil works. The Netherlands strongly objects to the (implicit) broadening of the scope of article 5.1 and 6.1. The addition is unnecessary because following the definition of network operator, any public sector body that conforms to that definition can be regarded as a network operator in the context of the GIA. The addition can lead to confusion because by adding the phrase "including public sector bodies" can be interpreted as that also public sector bodies that do not fall under definition of network operator, are in scope of this article. Therefore, the NL urges the Presidency to stick to the scope of the original Council position.

Compensation	
Article 14 (line 246) <i>The Presidency proposes to re-instate the obligation for Member States to lay down rules on adequate financial compensation for persons suffering damage as a result of the exercise of the rights provided for in this Regulation, whilst clearly specifying that Member States should not do so when such a legal regime already exists in national legislation.</i>	The NL agrees with the proposal of the Presidency to re-instate the obligation for MS to lay down rules on adequate financial compensation but proposes to limit these to the provisions that already existed under the BCRD . Furthermore, it should be specified that MS should not lay down such rules when such a legal regime already exists in national legislation.
Article 7 (11) (line 188) <i>The Presidency proposes to re-instate the provision given that there is an explicit referral to "in accordance with national law", also taking into account that a similar provision is already present in the BCRD, Article 7 (4).</i>	The NL agrees with the proposal of the Presidency to re-instate the provision.
Deadlines, including date of application	
Various articles <i>The Presidency strives to find a right balance here between both having reasonable deadlines and assuring that the regulation can still be applicable and produce positive effects before 2030. The Presidency asks the delegations to already reflect on the various deadlines. We will revert back to the delegation on this issue in a later stage.</i>	The NL <u>strongly urges the Presidency to maintain the GA implementation period of 24 months</u> in order to provide Members States sufficient time to prepare for the entry into force of the Regulation Regarding the various other deadlines, the Netherlands is in favour of preserving the deadlines agreed in the GA, especially in the cases related to the accessibility of the minimum information on physical infrastructure and planned civil works.
Intra-EU calls	
Article 16a, first paragraph, point 4	Regarding intra-EU calls, which the EP has included in its position on the GIA: it is indeed important to protect European consumers to excessive charges. The Netherlands is therefore in favour of extending and revising the caps that are set to expire May 2024. Abolishing extra charges altogether, as proposed by the EP, may be a step too far. Possible adverse effects should be carefully investigated first. The Netherlands therefore proposes to reject the amendments made by the EP in points 1-3 (article 16a, first paragraph) but change point 4 as follows: <i>In Article 10, paragraph 5 is deleted amended as follows: '5. Article 5a shall expire on 14 May 2024 2026.'</i>