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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Telecommunications and Information Society

Subject:	Gigabit Infrastructure Act - Steering note from the Presidency
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In view of the Working Party on Telecommunications and Information Society on 24 January, delegations will find in the annex the Presidency steering note on the Gigabit Infrastructure Act.

Introduction & state of play

On 25 January, the Presidency will have a trilogue with the Parliament, with the aim to agree on a way forward related to the issue of how to ensure compliance with the deadlines set out in Article 7(5) and (6). A first batch of Articles will be provisionally endorsed between the Presidency and the Parliament, if the meeting of Committee of Permanent Representatives (COREPER) of 24 January grants its approval to the Presidency.

In the meanwhile, the Presidency is having meetings at technical level, to advance on the Articles that will be part of the second batch of Articles. These Articles should be endorsed during the final trilogue of 5 February. Based on the discussions held at Working Party level on 11 December 2023, 8 January 2024 and 18 January 2024 – and the conclusions drawn during those meetings, the Presidency aims to find a well-balanced compromise with the Parliament. In addition, the Presidency will seek guidance again from COREPER on 31 January, prior to the final trilogue.

During the Council Working Party of 24 January, the Presidency would like to collect the positions of Member States on the following points, based on the questions set out below:

1. Civil works that are exempted from a permit granting procedure;
2. The entry into force & application of the various provisions in the GIA.

Part 1: Civil works that are exempted from a permit granting procedure

As explained in the steering note for the previous Council Working Party, the co-legislators have different views on **Art. 7(8) (line 185)** related to the Implementing powers for the Commission to specify categories of works that are exempted from any permit-granting procedure. Council and Parliament disagree on the implementing powers: whereas the Council deleted the provision, the Parliament insists on the adoption of a Delegated Act.

During our discussions with the Parliament, it was provisionally agreed to delete the provision in Art. 7(8), but instead list of some types of civil works that are exempted, based on the examples given in recital 41 (**line 51**) from needing a permit. The Presidency, in the spirit of cooperation, made a counter proposal on this list, keeping the list minimal and giving the Member States enough flexibility. We now seek the views of delegations on whether the following compromise wording is acceptable.

Art. 7(8) (line 185)¹ would now read:

“Civil works which consist in:

- *mere repair and maintenance works which are limited in scope, such as in terms of value, size and duration;*
- *limited technical upgrades of existing works or installations, with limited impact, or*
- *small-scale civil works that are limited in scope, such as in terms of value, size or duration or using minimally invasive techniques, such as micro trenching, required for the deployment of VHCN;*

shall not be subject to any permit-granting procedure within the meaning of this Article.

Based on duly justified and proportionate reasons, Member States or, as appropriate, competent authorities, shall identify² the types of small-scale civil works considered to be limited in scope, such as in terms of value, size or duration, the limited technical upgrades with limited impact. Information on such types of civil works shall be published via a single information point.

By way of derogation from the first subparagraph, competent authorities may require permits for the deployment of elements of VHCN or associated facilities:

- *on physical infrastructure or certain categories of physical infrastructure for reasons of architectural, historical, religious or environmental value, or for reasons otherwise protected in accordance with national law; or*
- *where necessary for reasons of public security, defence, safety, environmental or public health, or to protect the security of critical infrastructure.*

Member States or, as appropriate, competent authorities, shall identify such categories of physical infrastructure in their territories based on duly justified and proportionate reasons. The list of categories of physical infrastructure and the criteria applied to identify them, shall be published via a single information point.

¹ As Article 7 is already quite long, it can be envisaged to moving this paragraph in a new article ‘Exemptions from permit granting procedures’.

² Many MSs have already identified existing exceptions in their national/local laws. The requirement to identify types of civil works in advance, along the lines of the obligation set out in Art. 5(2) and Art. 6(4), would increase the legal certainty for applicants of the permits on what is meant with those terms (limited scope etc.).

Member States may require operators which plan to carry out civil works covered by this paragraph to notify, prior to the start of the works, the competent authorities of their intention to start the civil works.

The notification shall not entail more than a declaration by the operator of its intention to start the civil works and the submission of minimum information which is required to allow competent authorities to assess whether those works are covered by the derogation set out in the second subparagraph. Minimum information shall include at least the date when the civil works are expected to start, their duration and the area concerned by the works.”

The list specifies a limited type of civil works to be exempted. Member States can still determine additional exemptions, in line with the provision set out in Art. 1(3) of the GIA, as this provision falls under “minimum harmonization provision”. Furthermore, Member States can also define the scope of what is considered to be small-scale.

The last sentence is derived from Art. 12(4) of the Code (notification obligation for ECS providers). In order to align the text, line 184c would be deleted and line 184b would need to be further streamlined (or deleted, to be further discussed with the Parliament).

The Presidency would like to inform the delegations that at the technical level, the Parliament was not willing to add the notion of ‘public interest’ in the list of derogations, as – according to the Parliament – this notion would signify a significant carve out of the provision and would create legal uncertainty. That said, the Parliament is open to any improvements in the text, to mitigate any concerns of the Member States, if well-justified and based on concrete examples.

Consequently, in order to align the text with this proposed wording, **line 184c** would be deleted and **line 184b** would need to be further streamlined, to be discussed with the Parliament.

- The Presidency asks delegations whether this proposed compromise is acceptable.

Part 2: The entry into force & application of the various provisions in the GIA

The co-legislators are far apart from each other on the date from which the GIA should apply (**Art. 18, line 257**). The Parliament is of the view that the GIA should apply from **6 months** after its entry into force, in order to accelerate the deployment of very-high-capacity networks and reach the 2030 Digital Decade targets, whereas Council is of the view that **24 months** are needed to align their national provisions with the regulation, as considerable time and efforts will still be needed to withdraw national provisions overlapping with this Regulation by the time it starts to apply.

The Presidency is of the view that a diversification of the “date of application” for certain articles could be envisaged as an acceptable landing zone, in which certain articles would enter into force sooner, whereas other articles would require a longer period before entering into force. This is also already foreseen in the text. For example:

- In **Art. 4§2 – line 139** on making available information in the SIP by network operators and public sector bodies: date of entry into force + 12 (EP) vs. 24 (Council) months.
- In **Art. 8§1-3 - lines 190-192** on the obligation to equip certain buildings with fibre-ready in-building equipment: date of entry into force + 12 (EP) vs. 24 (Council) months.
- In **Art. 8§4 – line 193** related to the adoption of standards and technical specifications necessary for the implementation of paragraphs 1, 2 and 3: date of entry into force + 9 (EP) vs. 18 (Council) months.
- In **Art. 12§9 – line 238** related to the obligation to notify to the Commission the identity of the competent bodies within the GIA.
- In **Art. 8§6 – line 201** related to setting up certification schemes for the [mandatory/voluntary] “fibre-ready label”: date of entry into force + 12 months (EP) vs. no deadline (Council).

During our previous discussions within the Council, Member States have indicated in particular that the implementation of the provisions related to the **digitalization of the Single Information Points** (Articles 4 and 10) would require significant effort and time. It is yet unclear what the timeframe of digitalizing the single information points with the public procurements, acquisitions, trainings, or adapting the permit granting procedures in the authorities could be. Also, Member States are required to set out a single national digital entry point.

The Presidency is aware that the **requirements set out in Articles 3 – 7** are also particularly burdensome, as Member States need to establish transparency requirements, established lists of civil works that are limited in scope, specify lists of applicable exceptions of public physical infrastructure, specify the procedures for permit granting, list types of permits for which an exemption of the deadline is justified etc., and publish these via the SIP.

A more balanced and realistic application deadline would need to be found here, going beyond the proposed 6 months by the Parliament, knowing that it takes time to carry out an analysis of existing national provisions, amend legal acts accordingly and undertake steps to adopt necessary legislative changes³.

³ Lastly, the Presidency will clearly convey to the Parliament that any additional requirements to establish **mandatory coordinating bodies** (as in EP’s position in line 125 and 188c), would require additional time for the Member States. The Presidency will firmly oppose any mandatory establishment of those bodies.

The Presidency will convey that in particular the requirements set out in Articles 4⁴ and 10 (related to the SIPs) require additional resources, effort and time. In addition, it will convey that extensive preparation is needed to bring national legislation in line with this Regulation to not contradict the provisions of this Regulation, especially given the many requirements and procedures in the GIA, described in Art. 3-7.

- The Presidency would like to ask delegations if they could consider a shorter date of application in Article 18 – **line 257** than what is proposed at the moment in the Council mandate, taking into account that a longer application deadline is foreseen for other specific articles, such as the ones listed above. In this case, it would be considered to add a longer date of application for the provisions foreseen in Articles 4 and 10.

⁴ In Art. 4(2a), line 139a, an extension of 12 months to the date of application has been provisionally agreed at technical level for municipalities with less than 3500 inhabitants.