



## EUROPEAN COMMISSION

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C(2013) 5882 final

Mr Winfried KRETSCHMANN  
President of the Bundesrat  
Leipziger Straße 3 - 4  
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Dear President,

*The Commission would like to thank the Bundesrat for its Opinion concerning the Proposal for a Regulation of the European Parliament and of the Council on measures to reduce the cost of deploying high-speed electronic communications networks {COM(2013) 147 final}.*

*The development of the digital economy is a key driver for creating growth and jobs in Europe and has therefore a major role to play in Europe's economic recovery. Hence the ambitious broadband targets set out in the Digital Agenda for Europe to be reached by 2020. Moreover, ubiquitous high-speed networks are a prerequisite for bridging the digital divide and ensuring regional cohesion.*

*In this context, the Commission appreciates that the Bundesrat welcomes the above mentioned initiative, which is one of the 12 key actions identified in the Communication 'Single Market Act II: Together for Growth' which will boost growth, employment and confidence in the Single Market and generate real effects on the ground. The Commission notes that the Bundesrat shares the objectives pursued by this legislative instrument, acknowledges that cost-reduction measures and more efficiency are urgently required, and considers the suggested method of reusing infrastructure of other utilities for electronic communications services as 'eminently suitable'. Indeed, according to experts, cost reduction measures could yield up to a € 63.1 billion cost savings<sup>1</sup>.*

*As a matter of fact, the Commission's proposal builds upon best practices developed in Member States, including Germany's provisions of the TKG related to the physical infrastructure transparency or access to physical infrastructure cross-utility.*

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<sup>1</sup> According to experts, cost reduction measures could yield up to a 20-30% of total investment costs savings, which applied on the total investment which is considered necessary to achieve the Digital Agenda for Europe targets (ranging from € 76 to 210 billion), could result in savings of a minimum of €15.2 billion to a maximum of € 63.1 billion, cf. Analysys Mason (2012).

*The Commission understands that the Bundesrat is however of the view that the proposed Regulation's aim would be better achieved at Member State level and that the measures supported by the proposed Regulation would all be best implemented at a local level. The Commission also takes note of the Bundesrat's concerns regarding the impact of the proposed measure on local utilities, as possible addressees of the obligations, as well as its doubts over the limitations that this proposal might bring to property rights.*

*At this stage and taking into account more positive opinions expressed by other national Parliaments, the Commission would like to react as follows:*

*The need for EU action is, in the opinion of the Commission, demonstrated by reason of the scale and the effects of the proposed action. The proposed Regulation aims at removing barriers to the functioning of the Single Market, which are caused by the existence of a patchwork of rules at national and sub-national levels. The aim of addressing fragmentation can best be achieved at EU level. Action at Union level is also better suited to ensure equal treatment and non-discrimination of undertakings and investors throughout the EU. In particular, it is an obstacle to the completion of the digital single market that utilities may offer their physical infrastructure in one Member State and not in another. Another obstacle results from the patchwork of rules, applicable in the different Member States which causes delays in network deployment, and affects the costs.*

*In accordance with the principle of subsidiarity however, Member States may adopt more detailed rules or provisions complementing the rights and obligations specified in the proposed legal instrument, for example to establish data bases of existing physical infrastructure at the level of detail they believe best. Also, the proposal is without prejudice to Member States' constitutional system of attribution of competences and distribution of powers. This is especially relevant for those Member States with a federal system, such as Germany, which may allocate the powers provided for in this Regulation to the authority and at the level of aggregation which is best suited to exercise them. Lastly, the possibility of Member States to exempt categories of infrastructure or buildings from the application of this Regulation further demonstrates, in our view, that the Commission has taken due consideration of the principle of subsidiarity and proportionality.*

*The adoption of a legally binding instrument at EU level was proposed by the Commission in its Single Market Act II Communication and was endorsed by Heads of States and Governments at the European Council of 13 and 14 December 2012<sup>2</sup>. The type of legal instrument, a Regulation, was carefully chosen in view of its efficiency and effectiveness: by focussing on a limited number of directly applicable rights and obligations, it aims at removing identified obstacles and barriers to the development of the digital single market, without harmonising and interfering unnecessarily with organisational issues, which are left to the discretion of Member States.*

*The aim of the proposal is precisely to enable network operators, such as local utilities, to make use of their physical infrastructure and generate additional revenues. Neither the obligation to grant access, nor the obligation to provide information on existing physical infrastructure are intended as a complimentary, free of charge obligation. The draft*

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<sup>2</sup> Conclusions of the European Council of 13/14 December 2012, EUCO 205/12, <http://register.consilium.europa.eu/pdf/en/12/st00/st00205.en12.pdf>, item 17.

*Regulation favours commercial negotiation in the first place. It provides for an obligation to meet 'reasonable' requests under fair terms and conditions, listing indicatively specific grounds to refuse such access. Lastly, any network operator, including local utilities, intending to deploy broadband itself may benefit from the obligations provided in the draft regulation, the proposal thus applying non-discriminatively to both types of undertakings.*

*Neither the single information point, nor the dispute settlement body need to be set-up at a national level. What is envisaged is an optimal level of aggregation for each Member State (see Recitals 29 and 31 of the proposal). The proposed measures allow important flexibility for the Member States to adjust them to their national particularities. Hence, the administrative cost of implementing these measures will depend to a large extent on the specific choices of Member States. For instance, nothing in the draft proposal excludes that the cost of dispute resolution is passed on to the electronic communications provider. According to our estimations, the administrative cost resulting from the proposed Regulation will significantly be offset by the cost-reduction potential of the proposed measures. Moreover, the prevention of damage to existing facilities thanks to the transparency of existing physical infrastructure creates an important additional cost-reduction potential<sup>3</sup>.*

*Achieving the targets of the Digital Agenda for Europe, to which all Member States have subscribed, justify in our view that high-speed internet deployment is brought closer to the end-user's premises. At the same time, every care has been taken in the draft Regulation to bring the least limitation or onerous effect on property rights. In particular, with regard to existing buildings, the exercise of the right of public communications providers to terminate their network at the premise of a subscriber is subject to the agreement of the subscriber and provided that the operator minimises the impact on the private property and at its own costs. The obligation of in-building equipment is imposed upon the building owners or developers only regarding new or majorly renovated buildings, when the cost of the physical infrastructure is incremental compared to the overall cost of building. This cost, undertaken at the construction phase, is indeed substantially lower than the cost of retrofitting buildings with the same infrastructure at a later stage. Lastly, the proposal allows Member States to exempt certain categories of buildings or major renovations from these obligations, when the cost of fulfilling them is disproportionate.*

*The Commission hopes that these clarifications address the concerns raised by the Bundesrat and looks forward to continuing our political dialogue in the future.*

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*

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<sup>3</sup> Before the creation of transparency mechanisms for civil engineering works in the Netherlands, there were 40.000 incidents per year leading to EUR 40 million direct cost and EUR 80 million indirect cost. In Sweden, accidents were reduced by 80% following the introduction of a digging alert system.