Call for stakeholder input_ Art.5 GIA Guidelines

Fields marked with * are mandatory.

Introduction

This call for input gives stakeholders the opportunity for an early involvement in the development of the BEREC guidelines on the coordination of civil works according to Art. 5(6) of the Gigabit Infrastructure Act.

Stakeholders’ submissions will be published unless declared as confidential and will be used as an input to BEREC’s thinking on draft guidelines, but BEREC will not be publishing a direct response to their input at this stage. Stakeholders will of course have an opportunity to provide further submissions to BEREC when Draft Guidelines are consulted and BEREC will respond to that input in a separate document.

Indicate in your response any details that are considered as being confidential in Section D. „Data Confidentiality” at the end of this questionnaire.

BEREC looks forward to your response no later than 20 September 2024 COB.

Contributions should be sent preferably in English.

Your details

• Type of network operator* (e.g. transport, energy, ECN), public sector

*GIA defines a network operator as (a) an operator as defined in Article 2, point (29), of Directive (EU) 2018/1972; (b) an undertaking providing a physical infrastructure intended to provide: (i) a service of production, transport or distribution of: gas, electricity, including public lighting, heating, water, including disposal or treatment of wastewater and sewage, and drainage systems; (ii) transport services, including railways, roads including urban roads, tunnels, ports and airports;

• Name of the network operator (e.g. transport, energy, ECN), public sector
The new Gigabit Infrastructure Act (GIA) entered into force on 11 May 2024 and replaces the Broadband Cost Reduction Directive (BCRD) adopted in 2014. Most provisions of the GIA shall apply from 12 November 2025 onward. The GIA (Art. 1(1)) “aims to facilitate and stimulate the roll-out of very high capacity networks (VHCNs) by promoting the joint use of existing physical infrastructure and by enabling a more efficient deployment of new physical infrastructure so that such networks can be rolled out faster and at a lower cost.” One important measure to achieve this objective is Article 5 “coordination of civil works”.

Examples of “coordination of civil works” are:
- joint digging, where an excavation planned by one entity is coordinated with other potentially interested entities so that e.g. a street only needs to be dug up once, and so costs are saved;
- coordination of building works, for example the building of a mobile phone mast, in a similar fashion.

Article 5 in GIA lays down the following rights, obligations and exceptions.

Art. 5(1) of the GIA foresees the right for network operators and also for public sector bodies owning or controlling physical infrastructure to negotiate agreements on the coordination of civil works, including on the apportioning of costs, with operators with a view to deploying elements of VHCNs or associated facilities.

Art. 5(2) of the GIA imposes on network operators and also public sector bodies owning or controlling physical infrastructure the following obligation, when performing or planning to perform directly or indirectly civil works, which are fully or partially financed by public means.
- They shall meet any reasonable written request to coordinate those civil works under transparent and non-discriminatory terms made by operators with a view to deploying elements of VHCNs or associated facilities.
- Such requests shall be met provided that certain cumulative conditions regarding additional costs, control over the coordination of the civil works and timing are met. In addition, Member States may specify detailed requirements relating to administrative aspects of the request.

Art. 5(3) and (4) of the GIA foresee exceptions to the afore mentioned obligation which Member States may identify as follows. Requests to coordinate civil works between the operators of electronic communications networks may be deemed to be unreasonable, in limited circumstances and if certain conditions are met. Moreover, Art. 5(5) states that certain types of civil works may be excluded by Member States if they are considered to be limited in scope or relate to critical national infrastructure or for reasons of national security.

In Art. 5 paragraph (6) of the GIA, the co-legislators task Body of European Regulators for Electronic Communications (BEREC) with the provision of the Guidelines as follows:

“By 12 November 2025, after consulting stakeholders, the national dispute settlement bodies and other competent Union bodies or agencies in the relevant sectors, as appropriate, and after taking into account well-established principles and the specific situations of each Member State, BEREC shall, in close cooperation with the Commission, provide guidelines on the application of this Article, in particular concerning:

(a) apportioning the costs associated with the coordination of civil works as referred to in paragraph 1;
(b) the criteria that the dispute settlement bodies should follow when settling disputes falling within the scope of this Article; and
(c) the criteria for ensuring sufficient capacity to accommodate foreseeable future reasonable needs if coordination of civil works is refused pursuant to paragraph 4”

Art. 5(6) of the GIA and BEREC’s role providing Guidelines on that provision is also reflected in recital 40 of the GIA.

Furthermore, Art.13(2) of the GIA states that the national dispute settlement bodies shall issue a binding decision to resolve disputes, “taking full account of the principle of proportionality and the principles established in the relevant Commission guidance or BEREC Guidelines”.

Finally, Article 2 provides useful definitions for the whole text.

Similar (but not identical) rules on dispute settlement for coordination of civil works have been in place since 2014 under the Broadband Cost Reduction Directive.

BEREC is interested in experiences from the existing dispute settlement systems as well as views on future dispute settlement under the new GIA rules.

Dispute settlement in your country may be performed by a central government authority, a local authority, or another appointed body, which may not be called “Dispute Settlement Body”.
Questions and issues to be addressed in the guidelines

The consultation questions are structured according to sections (A) to (C) for which guidance has to be provided in the guidelines.

Overall what would you see as top priority in guidelines about the coordination of civil works? (e.g. particular situation needing to be addressed with guidelines)

400 character(s) maximum

A. Apportioning the costs associated with the coordination of civil works

The following two provisions of Art. 5 of the GIA refer explicitly to cost and apportioning of costs associated with the coordination of civil works.

Art. 5(1):
“Public sector bodies owning or controlling physical infrastructure and all network operators shall have the right to negotiate agreements on the coordination of civil works, including on the apportioning of costs, with operators with a view to deploying elements of very high capacity networks or associated facilities.”

Art. 5(2):
“When performing, or planning to perform, directly or indirectly, civil works which are fully or partially financed by public means, public sector bodies owning or controlling physical infrastructure and network operators shall meet any reasonable written request to coordinate those civil works under transparent and non-discriminatory terms made by operators with a view to deploying elements of VHCNs or associated facilities. […]

Requests to coordinate civil works shall be met, provided that all of the following conditions are met:

(a) the coordination of civil works will not entail any unrecoverable additional costs, including those caused by additional delays, for the network operator or public sector body owning or controlling physical infrastructure that initially envisaged the civil works in question, without prejudice to the possibility of the parties concerned agreeing on apportioning the costs; […]

In order to provide Guidelines on the apportioning of costs in the context of civil works coordination, BEREC would like to ask the following questions:

01. Are you aware of national guidelines, rules, procedures (for instance legal guidelines from competent authorities or industry associations good practices) or decisions by a Dispute Settlement Body related to the apportioning of costs associated with the coordination of civil works??

○ Yes
○ No
01a. If your answer to question 01. is „Yes”, do you consider them useful?

- Yes
- No

01b. If your answer to question 01a. is „Yes”, please explain did they facilitate reaching agreements on coordination of civil works.

- Yes
- No

02. Coordination of civil works between two operators of broadband or mobile infrastructure (ECN) is sometimes considered a special case of coordination of civil works, because the two parties in this case are in direct competition with each other. When sharing common costs, should it be taken into account whether the coordination is happening between ECN and ECN or between ECN and NON-ECN (for instance between a broadband operator and an electricity or gas operator)?

- Yes
- No

03. Do you have any practical experience in coordinating civil works under BRCD Art.5 (or its national transposition) provisions?

- Yes
- No

03a. If your answer to question 03. is „No”, that is due to:

- Information on planned civil works is not made available
- Works are announced with too short notice
- Lack of interest from undertakings to participate in the civil works of others
- The other party was not reactive enough during the negotiations
- Difficulties to come to an agreement over network path or the location of additional elements (manholes, cabinets etc.)
- Difficulties to come to an agreement over technical conditions (depth, width, methodology, service level agreement (SLA), maintenance etc.)
- Difficulties to come to an agreement over cost apportioning
- Used other forms of agreements
- Other reason

03b. If you mark “other reason” please specify?

200 character(s) maximum


03c. If your answer to question 03. is „Yes”, please indicate the estimated % of your network deployments benefitting from the coordination of civil works, out of the total of civil works carried out in the last three years. (3 digit number max).
04. Please indicate, if any, costs which, in your view, can be allocated directly to one of the coordinating parties such that no cost apportioning method is needed (“direct costs”) or costs which, in your view, cannot be allocated directly to one of the coordinating parties, such that a cost apportioning methodology has to be applied (“common cost”). For „common costs”, please describe a cost-apportioning methodology which you consider relevant.

<table>
<thead>
<tr>
<th>Cost category</th>
<th>Direct cost? (costs which can be allocated directly to one of the coordinating parties)</th>
<th>Common cost? (costs which cannot be allocated directly to one of the coordinating parties)</th>
<th>If common cost, which apportioning methodology do you consider relevant? (max. 200 characters)</th>
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</thead>
<tbody>
<tr>
<td>Cost for the construction due to the coordination (e.g. larger trench needed, or longer trenches, different method of digging necessary)</td>
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<td>Trenching cost (cost for digging, transportation of the excavated materials, backfilling of the trench, renewal of the surface etc.)</td>
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<td>Supply segment specific costs (material such as ducts)</td>
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<td>Overhead cost for the construction site (cost for the provision of the building site facilities, request for permissions, planning, project management, documentation etc.)</td>
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<tr>
<td>Cost due to the coordination / collaboration (negotiations incl. meetings, adaption of the planning procedure, possible timelags incurred by coordination)</td>
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<tr>
<td>Other (max 200 characters)</td>
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</table>
05. Overall which point would you see as top priority in guidelines about the coordination of civil works with respect to the apportioning of costs?

800 character(s) maximum

B. The criteria that the dispute settlement bodies should follow when settling disputes falling within the scope of Art. 5 of the GIA

The national dispute settlement body has to settle disputes where an agreement on the coordination of civil works pursuant to Art. 5(2) has not been reached within 1 month from the date of receipt of the formal request to coordinate civil works, according to Art. 13(1)c of the GIA.

The legal basis of such disputes are the provisions of Art. 5 of the GIA (see section 1 and annex).

Art. 13(3) and (2)b of the GIA stipulates that the decision of the national dispute settlement body may consist in setting fair and reasonable terms and conditions, including price, where appropriate.

In order to provide Guidelines on the criteria that the national dispute settlement bodies (DSBs) should follow when settling disputes, BEREC would like to ask the following questions:

06. Do you have any practical experience in approaching the DSB for disputes on civil works coordination under BRCD Art.5 (or its national transposition) provisions?

☐ Yes
☐ No

07. In your view, what are the most important criteria that the national dispute settlement body should follow when settling disputes?

800 character(s) maximum

08. If YES to the question 6, what were the most recurring/most complex/most strategic points of dispute related to coordination of civil works that you encountered?

☐ Project delays
☐ Additional costs of the project
☐ Appropriate costs-sharing
☐ DSB proceedings itself
☐ Other

08a. If your answer to question 08. is „Other”, please explain what other points of dispute related to coordination of civil works that you encountered?

400 character(s) maximum
09. Apart from the content of the dispute, is there any other rule or procedure you think should be followed when settling disputes (number of pages of the decision, level of granularity of the approach, etc.)?  
800 character(s) maximum

C. The criteria for ensuring sufficient capacity to accommodate foreseeable future reasonable needs if coordination of civil works is refused pursuant to Art. 5(4) of the GIA

Art. 5(4) defines cases where a request to coordinate civil works may be deemed to be unreasonable. In such cases "the undertaking providing, or authorised to provide, public electronic communications networks that refused the coordination of civil works shall deploy physical infrastructure with sufficient capacity to accommodate possible future reasonable needs for third-party access."

In order to provide Guidelines on the criteria for ensuring sufficient capacity to accommodate foreseeable future reasonable needs if coordination of civil works is refused pursuant to paragraph 4, BEREC would like to ask the following questions:

10. Please indicate, how additional sufficient capacity, should be determined in a given request for coordination that was refused pursuant to Art. 5(4)?
   - Providing the infrastructure with sufficient duct (e.g. the same capacity which was requested by the denied party), microduct or pole capacity for each denied party
   - Providing the infrastructure with one additional duct, microduct or pole capacity beyond the needs of the denied parties
   - Providing the infrastructure with two or more additional ducts, microducts or pole capacity beyond the needs of the denied parties
   - Other.

10a. If your answer to question 10. is „Other“, please explain what other?  
200 character(s) maximum

11. In your view, does the answer to the previous question depend on the kind of physical infrastructure?  
   - Yes
   - No

11a. If your answer to question 11. is „Yes“, please explain how?  
800 character(s) maximum
12. In your view, what are the most important criteria for ensuring sufficient capacity to accommodate foreseeable future reasonable needs if coordination of civil works is refused?

800 character(s) maximum

D. Data confidentiality

If you consider answer(s) in this Call for initial stakeholder input confidential, please indicate the question(s) whose answers are confidential.

Thank you for your contribution.