Call for stakeholder input_ Art.11 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 access to in-building physical infrastructure according to Article 11(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 C. „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 an 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
Legal basis

The Gigabit Infrastructure Act (GIA) entered into force on 11 May 2024 and replaces the Broadband Cost Reduction Directive (BCRD) adopted in 2014. 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 11, “access to in-building physical infrastructure”. Examples of “in-building physical infrastructure” is cable ducts, cable trays and other kinds of installations intended to host wired and/or wireless access networks. Article 11 in GIA lays down rights and obligations as follows:

Provisions regarding the right of any provider of public electronic communications networks

- to roll out its network at its own costs up to the access point (Art. 11(1) of the GIA);
- to access any existing in-building physical infrastructure with a view to deploying elements of VHCNs if duplication is technically impossible or economically inefficient (Art. 11(2) of the GIA); and
- if fibre-ready in-building physical infrastructure is not available to terminate its network at the premises of the subscriber using the existing in-building physical infrastructure (Art. 11(4) of the GIA).
Provisions regarding the obligation of any holder of a right to use the access point and the in-building physical infrastructure to meet all reasonable written requests for access to the access point and the in-building physical infrastructure from providers of public electronic communications networks under fair, reasonable and non-discriminatory terms and conditions, including price, where appropriate (Art. 11(3) of the GIA).

In Article 11(6) of the GIA, the co-legislators task 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 taking into account well-established principles and the distinct situation across Member States, BEREC shall, in close cooperation with the Commission, publish guidelines on:

(a) the terms and conditions of access to in-building physical infrastructure, including on the application of fair and reasonable terms and conditions, and
(b) the criteria that the national dispute settlement bodies should follow when settling disputes.

Article 11(6) and BEREC’s role providing Guidelines on that provision is further described in recital 58 of the GIA.

Furthermore, Article 13(2) of the GIA states that the national dispute settlement bodies (DSB) 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 access to in-building physical infrastructure 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”.

*The Commission guidance refers to article 3 of the GIA (access to physical infrastructure but not in-building)

Questions and issues to be addressed in the guidelines

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

Overall what would you see as top priority in guidelines about access to in-building physical infrastructure? (e.g. particular situation needing to be solved with guidelines) (max 400 characters)
A. The terms and conditions of access to in-building physical infrastructure, including the application of fair and reasonable terms and conditions

The following provision of Art. 11 of the GIA refers explicitly to the terms and conditions of access to in-building physical infrastructure.

Art. 11(3): "Any holder of a right to use the access point and the in-building physical infrastructure shall meet all reasonable written requests for access to the access point and the in-building physical infrastructure from providers of public electronic communications networks under fair, reasonable and non-discriminatory terms and conditions, including price, where appropriate. [...]."

In order to provide Guidelines on terms and conditions of access to in-building physical infrastructure, including on the application of fair and reasonable terms and conditions, BEREC would like to ask the following questions:

01. Have you experienced any difficulty getting access to in-building infrastructure under BCRD Art.9 (or its national transposition)?
   - [ ] Yes
   - [ ] No

01a. If your answer to question 01. is „Yes“, that is mainly due to:
   - [ ] Lack of knowledge of the regulatory/legal framework
   - [ ] Long procedures to come to an agreement with the building’s manager/owner
   - [ ] Difficulties to acquire information about network path or additional element’s location
   - [ ] Difficulties to come to an agreement over access fees
   - [ ] Difficulties to come to an agreement over technical conditions
   - [ ] Concerns by owners about potentially insufficient restoration works, if some construction work is necessary in the common parts of the building
   - [ ] Refusal of permission by owners
   - [ ] Other.

01b. If your answer to question 01a. is „Other“, please specify other.

200 character(s) maximum

02. Have you (or members of your association) requested access to in-building physical infrastructure or have you (or members of your association) been addressed with access requests from providers of public electronic communications networks?
   - [ ] Yes
   - [ ] No
No
<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
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<tbody>
<tr>
<td>What is the total number of access requests over the past 3 years you were involved in (either you required access or were required to provide access by an electronic communication network operator (ECN))</td>
<td></td>
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<tr>
<td>What is the percentage of cases where you encountered significant problems to agree on the terms of access (but finally managed to agree)? (3-digit number max)</td>
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<tr>
<td>What is the percentage of cases in which access has been refused?</td>
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</table>
2b. If you have provided answer on the second row of the table please explain what kind of problems were most frequent or tougher to deal with?

300 character(s) maximum

3. Please indicate what is the most common approach when the in-building infrastructure is available and suitable for hosting elements of VHCN:

- [ ] 3.1 transfer of the whole infrastructure from the building owner/manager to the first applicant operator via an Indefeasible Right of Use (IRU)* contract (building operator)
  *Indefeasible right of use (IRU) is a type of telecommunications lease permanent contractual agreement, that cannot be undone, between the owners of a communications system and a customer of that system. The word "indefeasible" means "not capable of being annulled, or voided, or undone"
- [ ] 3.2 access to the infrastructure until its capacity is fulfilled to all operators (first come, first served)
- [ ] 3.3 other

03a. In case you choose option 3.2, who is typically responsible for managing the infrastructure?

- [ ] building owner
- [ ] building manager
- [ ] other

03b. In case you choose option 3.3 „other“, please specify.

Text of 1 to 200 characters will be accepted

04. If you choose option 3.2 of question 03, in your experience, what are the most common financial terms for access to the in-building physical infrastructure?

- [ ] no charges
- [ ] upfront fee per infrastructure
- [ ] recurrent fee per infrastructure
- [ ] upfront fee per connected household
- [ ] recurrent fee per connected household
- [ ] other.

04a. If your answer to question 04. is „Other“, please specify other.

Text of 1 to 150 characters will be accepted

05. In your view, what is the most important non-price related issue concerning the terms and conditions of access that the BEREC Guidelines should tackle?

Text of 1 to 200 characters will be accepted
06. In your view, what is the most important issue related to the application of fair and reasonable pricing connected with in-building access that the BEREC Guidelines should tackle?

Text of 1 to 200 characters will be accepted

B. The criteria that the national dispute settlement bodies should follow when settling disputes falling within the scope of Art. 11 of the GIA

The national dispute settlement body has to settle disputes where an agreement on access to in-building physical infrastructure referred to in Art. 11(2) or Art. 11(3) has not been reached within one month from the date of receipt of the formal request for access, according to Art. 13(1)(d) of the GIA.

The legal basis of such disputes are the provisions of Art. 11 of the GIA (see legal basis and annex).

Art. 13(3) 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:

07. Do you have any practical experience in approaching the DSB for disputes on access to in-building infrastructure under BCRD Art. 9 (or its national transposition) provisions?

☐ Yes  ☐ No

08. Have you already been able to reach an agreement to get access to the in-building infrastructure with the counterparty independently of DSB (either before any dispute settlement procedure was initiated or when an agreement was reached in parallel with a dispute settlement procedure?)

☐ Yes  ☐ No

08a. If your answer to question 08. is „Yes“, what criteria or rules were used most of the time to determine fair terms and conditions?

800 character(s) maximum

09. In your view, what is the most important topic BEREC’s guidelines should set criteria on regarding disputes falling within the scope of Art.11 of the GIA? Which rules would you suggest and why on that most important topic?

800 character(s) maximum
10. 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, topics you excluded, etc.)?

800 character(s) maximum

C. 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.