

- (8) 'high-speed-ready in-building physical infrastructure' means in-building physical infrastructure intended to host elements or enable delivery of high-speed electronic communications networks;
- (9) 'major renovation works' means building or civil engineering works at the end user's location encompassing structural modifications of the entire in-building physical infrastructure or a significant part thereof, and requiring a building permit;
- (10) 'permit' means an explicit or implicit decision of a competent authority following any procedure under which an undertaking is required to take steps in order to legally carry out building or civil engineering works;
- (11) 'access point' means a physical point, located inside or outside the building, accessible to undertakings providing or authorised to provide public communications networks, where connection to the high-speed-ready in-building physical infrastructure is made available.

Article 3

Access to existing physical infrastructure

1. Member States shall ensure that every network operator has the right to offer to undertakings providing or authorised to provide electronic communications networks access to its physical infrastructure with a view to deploying elements of high-speed electronic communications networks. Reciprocally, Member States may provide for the right of public communications network operators to offer access to their physical infrastructure for the purpose of deploying networks other than electronic communications networks.

2. Member States shall ensure that, upon written request of an undertaking providing or authorised to provide public communications networks, any network operator has the obligation to meet all reasonable requests for access to its physical infrastructure under fair and reasonable terms and conditions, including price, with a view to deploying elements of high-speed electronic communications networks. Such written request shall specify the elements of the project for which the access is requested, including a specific time frame.

3. Member States shall require that every refusal of access be based on objective, transparent, and proportionate criteria, such as:

- (a) the technical suitability of the physical infrastructure to which access has been requested to host any of the elements of high-speed electronic communications networks referred to in paragraph 2;
- (b) availability of space to host the elements of high-speed electronic communications networks referred to in paragraph 2, including the network operator's future needs for space that are sufficiently demonstrated;
- (c) safety and public health concerns;
- (d) integrity and security of any network, in particular of critical national infrastructure;
- (e) the risk of serious interferences of the planned electronic communications services with the provision of other services over the same physical infrastructure;
- (f) the availability of viable alternative means of wholesale physical network infrastructure access provided by the network operator and suitable for the provision of high-speed electronic communications networks, provided that such access is offered under fair and reasonable terms and conditions.

Member States shall ensure that the network operator states the reasons for the refusal within two months from the date of the receipt of the complete request for access.

4. Where access is refused or agreement on specific terms and conditions, including price, has not been reached within two months from the date of receipt of the request for access, Member States shall ensure that either party is entitled to refer the issue to the competent national dispute settlement body.

5. Member States shall require the national dispute settlement body referred to in paragraph 4 to issue, taking full account of the principle of proportionality, a binding decision to resolve the dispute initiated pursuant to paragraph 4, including the setting of fair and reasonable terms and conditions, including price where appropriate.

The national dispute settlement body shall resolve the dispute, within the shortest possible time frame and in any case within four months from the date of the receipt of the complete request except in exceptional circumstances, without prejudice to the possibility of any party to refer the case to a court.

Where the dispute relates to access to the infrastructure of an electronic communications network provider and the national dispute settlement body is the national regulatory authority, it shall, where appropriate, take into account the objectives set out in Article 8 of Directive 2002/21/EC. Any price set by the dispute settlement body shall ensure that the access provider has a fair opportunity to recover its costs and shall take into account the impact of the requested access on the business plan of the access provider, including the investments made by the network operator to whom access is requested, in particular in the physical infrastructures used for the provision of high-speed electronic communications services.

6. This Article shall be without prejudice to the right to property of the owner of the physical infrastructure in cases where the network operator is not the owner, and to the right to property of any other third parties, such as landowners and private property owners.

Article 4

Transparency concerning physical infrastructure

1. Member States shall ensure that, in order to request access to physical infrastructure in accordance with Article 3(2), every undertaking providing or authorised to provide public communications networks has the right to access, upon request, the following minimum information concerning the existing physical infrastructure of any network operator:

- (a) location, and route;
- (b) type and current use of the infrastructure; and
- (c) a contact point.

Member States shall ensure that the undertaking requesting access specifies the area in which it envisages deploying elements of high-speed electronic communications networks.

Member States may allow access to the minimum information to be limited only if necessary in view of the security of the networks and their integrity, national security, public health or safety, confidentiality or operating and business secrets.

2. Member States may require every public sector body holding, in electronic format, by reason of its tasks elements of the minimum information referred to in paragraph 1 concerning the physical infrastructure of a network operator to make it available via the single information point by electronic means before 1 January 2017, and Member States shall require such public sector bodies to make it available, upon request, to undertakings providing or authorised to provide public communications networks, without prejudice to limitations pursuant to paragraph 1. Any update to that information and any new element of minimum information referred to in paragraph 1 received by the public sector body shall be made available to the single information point within two months from the date of its receipt. That period may be extended by a maximum of one month, where this is required to guarantee the reliability of the information provided.

3. Minimum information made available to a single information point pursuant to paragraph 2 shall be accessible promptly, via the single information point, in electronic format and under proportionate, non-discriminatory and transparent terms. Member States shall ensure that access to the minimum information pursuant to this paragraph is made available via the single information point by 1 January 2017.

4. Where the minimum information referred to in paragraph 1 is not available via the single information point, Member States shall require network operators to provide access to such information upon the specific written request by an undertaking providing or authorised to provide public communications networks. Such request shall specify the area envisaged for the deployment of elements of high-speed electronic communications networks. Access to information shall be granted within two months from the date of receipt of the written request under proportionate, non-discriminatory and transparent terms, without prejudice to the limitations pursuant to paragraph 1.

5. Upon the specific written request of an undertaking providing or authorised to provide public communications networks, Member States shall require network operators to meet reasonable requests for on-site surveys of specific elements of their physical infrastructure. Such request shall specify the elements of the network concerned with a view to deploying elements of high-speed electronic communications networks. On-site surveys of the specified network elements shall be granted under proportionate, non-discriminatory and transparent terms within one month from the date of receipt of the written request, without prejudice to the limitations pursuant to paragraph 1.

6. Member States shall ensure that, in the event of a dispute arising in connection with the rights and obligations provided for in this Article, either party is entitled to refer the dispute to a national dispute settlement body. The national dispute settlement body shall, taking full account of the principle of proportionality, issue a binding decision to resolve the dispute within the shortest possible time frame and in any case within two months, except in exceptional circumstances, without prejudice to the possibility of any party to refer the case to a court.

7. Member States may provide for exemptions from the obligations provided for in paragraphs 1 to 5 in the case of existing physical infrastructures considered not technically suitable for the deployment of high-speed electronic communications networks or in case of critical national infrastructure. Such exemptions shall be duly reasoned. The interested parties shall be given the opportunity to comment on the draft exemptions within a reasonable period. Any such exemption shall be notified to the Commission.

8. Member States shall ensure that the undertakings providing or authorised to provide public communications networks that obtain access to information pursuant to this Article take appropriate measures to ensure respect for confidentiality, and operating and business secrets.

Article 5

Coordination of civil works

1. Member States shall ensure that every network operator has the right to negotiate agreements concerning the coordination of civil works with undertakings providing or authorised to provide electronic communications networks with a view to deploying elements of high-speed electronic communications networks.

2. Member States shall ensure that every network operator performing directly or indirectly civil works, either fully or partially financed by public means, meets any reasonable request to coordinate civil works on transparent and non-discriminatory terms, made by undertakings providing or authorised to provide public communications networks with a view to deploying elements of high-speed electronic communications networks. Such request shall be met provided that:

- (a) this will not entail any additional costs, including because of additional delays, for the initially envisaged civil works;
- (b) this will not impede control over the coordination of the works; and
- (c) the request to coordinate is filed as soon as possible and in any case at least one month before the submission of the final project to the competent authorities for permit granting.

Member States may provide rules on apportioning the costs associated with the coordination of civil works.

3. Where an agreement on the coordination of civil works pursuant to paragraph 2 is not achieved within one month from the date of receipt of the formal request to negotiate, Member States shall ensure that any party is entitled to refer the issue to the competent national dispute settlement body.

4. Member States shall ensure that the national dispute settlement body referred to in paragraph 3 issues, taking full account of the principle of proportionality, a decision to resolve the dispute initiated pursuant to paragraph 3, including the determination of fair and non-discriminatory terms, conditions and charges where appropriate.

The national dispute settlement body shall resolve the dispute within the shortest possible time frame, and in any case within two months from the date of the receipt of the complete request, except in exceptional circumstances, without prejudice to the possibility for any party to refer the case to a court.

5. Member States may provide for exemptions from the obligations provided for in this Article for civil works of insignificant importance, such as in terms of value, size or duration, or in the case of critical national infrastructure. Such exemptions shall be duly reasoned. The interested parties shall be given the opportunity to comment on the draft exemptions within a reasonable period. Any such exemption shall be notified to the Commission.

Article 6

Transparency concerning planned civil works

1. In order to negotiate agreements on coordination of civil works referred to in Article 5, Member States shall require any network operator to make available upon the specific written request of an undertaking providing or authorised to provide public communications networks the following minimum information concerning on-going or planned civil works related to its physical infrastructure for which a permit has been granted, a permit granting procedure is pending or first submission to the competent authorities for permit granting is envisaged in the following six months:

- (a) the location and the type of works;
- (b) the network elements involved;
- (c) the estimated date for starting the works and their duration; and
- (d) a contact point.