

# Feedback Statement

Bitkom's Feedback on the Gigabit Infrastructure Act (GIA)

10 May 2023

## Bitkom-Assessment

A high-performance digital infrastructure is a crucial prerequisite for economic development and prosperity in Europe. Especially in times of increasing digitalization, a fast and reliable internet connection is essential. In addition, digital infrastructures will play an important role in the transition to a green economy as they are important enablers of energy efficiency in other sectors.

Bitkom therefore welcomes the fact that the EU Commission wants to foster the expansion of very high capacity networks (VHCN). These are necessary to meet the EU's increased connectivity needs and the EU Green Deal objectives. The Gigabit Infrastructure Act aims to facilitate and stimulate the roll-out of VHCN by streamlining and accelerating permit procedures, 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.

Bitkom welcomes furthermore that the GIA clearly fosters infrastructure investments and infrastructure competition. The GIA will thus not only strengthen Europe's competitiveness, but also increase the chance of digital participation for EU citizens. For the benefit of doubt, the provisions for private undertakings set out in the GIA should not be implemented equivalent to a sector specific ex-ante regulation, as the EEC framework is already sufficient to ensure fair competition.

We strongly support the objectives of the Gigabit Infrastructure Act. It is important that the EU Commission and the member states work together to bring the digital infrastructure in Europe to a higher level and thus secure Europe's future viability. In order for the Gigabit Infrastructure Act taking full effect, we recommend the following changes and clarifications:

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### Article 3 - Access to existing physical infrastructure

Bitkom welcomes that public sector bodies owning or controlling physical infrastructure are included in the scope of article 3, and thus the obligations regarding access to existing physical infrastructure. Access to physical infrastructures owned or controlled by public sector bodies can make a significant contribution to accelerate the rollout of VHCN. In order to fully exploit the synergy potential and accelerate rollout, also land and real estate owned by public sector bodies should be included in the scope of Article 3. In many cases, public sector bodies, in particular municipalities or public entities own woods or land outside the settled areas which should fall under the obligations of article 3. This would be an important lever for nationwide mobile coverage.

Article 3 (6) stipulates exemptions for certain categories of buildings owned or controlled by public sector bodies, inter alia “for reasons of architectural, historical, religious, or natural value”. This stipulation is by far too vague. Therefore, it should be deleted altogether. Alternatively, such exemption should be limited to “reasons of **major** architectural, historical, religious or natural value protected **in accordance with national law** [note: official German GIA text: “von hohem architektonischem, historischem, religiösem oder natürlichem Wert, die nach nationalem Recht geschützt sind] – in line with the wording used also in Article 7 (9), at least in the official German GIA version.

Finally, in order to streamline the coordination of access requests for both sides, Bitkom proposes that article 3 (4) is amended so that Member States “must” (rather than “may”) establish a body to coordinate access requests to physical infrastructure and land owned or controlled by public sector bodies.

### Article 4 – Transparency on physical infrastructure

Article 4 GIA introduces a new EU-wide obligation for network operators and public sector bodies to provide certain minimum information about their physical infrastructures. This obligation is limited by exemptions under article 4 (4) GIA, in particular in relation to national critical infrastructures.

In our view, it is crucial to reconcile the goal of increased transparency with legitimate security interests. The implementation of the centralized data collection must take into consideration the risks of attack on critical infrastructure. The right to access the information in such a centralized data repository must prevent sensitive data from being disclosed to unauthorized persons. Furthermore, the respective network operator must be informed about the requested data on its infrastructure as well as the reasons and deadlines for such a request. The protection of business secrets must always be guaranteed.

**Article 5 – Coordination of civil works**

Bitkom welcomes that the GIA maintains the principle of the BCRD that requests for coordination only have to be met when performing or planning to perform directly or indirectly civil works which are fully or partially financed by public means. We also support that recital (33) clearly states regulatory constraints preventing as a general rule the negotiation among network operators of agreements to coordinate civil works to deploy VHCN should be prohibited, as such regulatory constraints exist in the German Telco Act (TKG).

According to article 5 (3) GIA, network operators may waive a request to coordinate their civil works under certain conditions. This para 3 should be abolished.

**Article 6 – Transparency on planned civil works**

According to article 6 GIA, any network operator shall make information on planned civil works available via the single information point. Other operators have the right to access the information in electronic form upon request via the single information point. This right can only be restricted in very limited circumstances, i.e., to the extent necessary to safeguard the security of the networks and their integrity, national security, public health or safety, confidentiality or trade and business secrets.

In principle, transparency on planned civil works can contribute to leveraging synergies and avoiding a duplication of civil works and is thus supported. Yet, we take a critical view of this far-reaching obligation to provide information. Information on planned civil works is sensitive as it offers insights into an operator's business plans.

As operators are not obliged to meet requests for coordinating their construction works as long as they are privately financed (article 5 (2) GIA), there should also be no obligation to provide information on privately financed construction works.

**Article 7 – Procedure for granting permits, including rights of way**

Bitkom highly welcomes that the Commission wants to simplify and accelerate the procedures for granting permits. It is important that there are standardized procedures in Germany and the EU. We therefore support that the completeness of an application is to be determined within 15 days after receipt of the application. We propose that a permit fiction of the granting of authorization should occur after three, rather than four months (article 7 (5) and (7) GIA).

With regard to the rules for a permit fiction of article 7 (7), we propose to replace “in the absence of a response” by “in the absence of a decision” in order to ensure legal certainty.

In line with the definition of “permit” in article 2 (10), it should be clarified in article 7 (7) that the deadline, respectively legal fiction is meant as the total deadline. The same should be done in the case of a set of decisions taken successively by one or several competent authorities that are needed for an undertaking to carry out building or civil engineering works necessary for the deployment of elements of very high capacity networks.

Yet, permit granting must not be linked to the prior provision of information on civil works to the single information point. This slows down procedures for granting permits instead of accelerating them. Furthermore, such requirement would be disproportionate when civil works are fully privately funded, as such civil works do not fall under the coordination obligations of article 5. Therefore, Bitkom proposes to delete article 7 (4) GIA.

Bitkom represents more than 2,000 companies of the digital economy. Through IT- and communication services alone, our members generate a domestic annual turnover of 190 billion Euros, including 50 billion Euros in exports. The members of Bitkom employ more than 2 million people in Germany. Among these members are 1,000 small and medium-sized businesses, over 500 startups and almost all global players. They offer a wide range of software technologies, IT-services, and telecommunications or internet services, produce hardware and consumer electronics, operate in the digital media sector or are in other ways affiliated with the digital economy. 80 percent of the members' headquarters are located in Germany with an additional 8 percent both in the EU and the USA, as well as 4 percent in other regions of the world. Bitkom promotes the digital transformation of the German economy, as well as of German society at large, enabling citizens to benefit from digitalization. A strong European digital policy and a fully integrated digital single market are at the heart of Bitkom's concerns, as well as establishing Germany as a key driver of digital change in Europe and globally.