

## **ANGA Position on the proposal by the European Commission for a regulation of the European Parliament and of the Council on measures to reduce the cost of deploying gigabit electronic communications networks and repealing Directive 2014/61/EU (Gigabit Infrastructure Act – GIA)**

**COM(2023) 94 final**

The discussions in the European Parliament and the Council on the draft of the “Gigabit Infrastructure Act” (GIA) are very advanced. The responsible ITRE committee of the European Parliament will vote on its report on 19 September and the Spanish Presidency has announced to present a new compromise text to the Council end of September.

ANGA therefore wants to point out several aspects that are crucial for speeding up the deployment of very high capacity networks (VHCN) in Germany and that should be taken into account by the co-legislators:

- 1. ANGA urges the co-legislators not to follow up on ITRE amendments 254, 255, 256, 257 that aim at focusing even more on symmetric access regulation and hence deregulation of SMP operators. The ITRE committee should dismiss these amendments in their vote in September.**

Reason: A further shift towards a regulatory regime that would set symmetric regulation before asymmetric regulation goes against the clear approach of the EECC. The European legislator has made it clear in the EECC that for the time being, further deregulation of SMP operators is not adequate. On the contrary, access to physical infrastructure has been set as the primary remedy in case of SMP regulation.

- 2. ANGA asks the co-legislators to include an exemption in Article 3 of the GIA for the regulated access to physical infrastructures as long as the network operator offers viable alternative means of any kind of wholesale access including active access. ANGA supports ITRE amendments 114, 194 and 249.**

Reason: The specific competitive situation in Germany and its fiber deployment status have to be taken into account when symmetrically regulating access to existing physical infrastructure of telecoms operators. The GIA should refrain from introducing new symmetric access provisions in Article 3 that invite overbuilding of existing fiber networks by the SMP operator.

The German law grants the right of refusal also if a requested network operator offers active access (e.g. bit stream access) to their network. This makes sense for the German market, as it helps balancing Deutsche Telekom’s market power: Deutsche Telekom cannot just ask for physical access for strategic reasons and overbuild an existing VHCN, especially fiber network. Requested network operators can prevent such overbuilt by offering active access and thereby also make most of their active network capacities – bringing down unit costs and energy use per customer.

- 3. ANGA supports the ITRE amendments 307, 308 on Article 6 para. 4 that narrow the scope of the obligation for network operators to supply information on civil works to situations where the civil works are publicly funded.**

Reason: The obligation to deliver civil works information can only be mandatory in case the civil works are publicly funded, not in case of private funding.

Broader data supply obligations would work to the detriment of fast fiber network deployment: Information on civil works is highly sensible as it is part of a network provider's building strategy.

Hence, such information can be misused by the SMP operator to torpedo the undertaking's business plans by building out their own network – and overbuilding the already planned competitor's network – instead of using open access offers.

**4. ANGA rejects the Commission's suggestion in Article 6 para. 1 sub. para. 2 to let the issuance of a permit depend on the prior delivery of civil works data.**

Reason: The provision ignores two practical facts: (1) network operators employ contractors with their civil works and hence do not have the information in question; they would need to contractually oblige their business partners to hand over the information and (2) even contractors do usually not have the information three months prior to the submission of the permit request; i.e. such permit requests are sometimes issued only days before civil works are planned to be conducted.

**5. ANGA supports the Commission's proposal in the GIA on tacit approval and asks the co-legislator not to follow up on amendments suggesting to delete the respective paragraphs in Article 7. ITRE should dismiss such amendments in their vote in September.**

Reason: The rules on tacit approval in Article 7 should be maintained. Tacit approval is one of the most effective tools to accelerate the roll-out of VHCN. In Germany, we already have rules on tacit approval and legal fiction of completeness.

**6. ANGA rejects the Commission's 'fiber-ready' approach regarding inhouse infrastructure and the broadband label in Article 8 of the GIA. ANGA supports the amendments in the ITRE committee suggesting to choose a technology neutral approach that would entail all VHCN-/gigabit networks.**

Reason: The focus on fiber-ready irritates for two reasons. (1) The EU has not set any infrastructure objective. It has given itself the objective to provide all households with gigabit connections by 2030, irrespective of the used technology. (2) In the EECC the EU promotes the deployment and uptake of VHCN, again not fiber or any other given technology.

These broader approaches make sense as the focus on one specific technology does not represent current and near future technical practices. As long as different network technologies are used across and in member states, it appears illogical to narrow in-building infrastructure to one specific technology all across the EU.

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The German Broadband Association ANGA e.V. represents the interests of more than 200 undertakings from the German broadband industry. Among its members are network operators like Vodafone Germany, Tele Columbus (PYUR), EWE TEL, NetCologne, M-net, wilhelm.tel and several technology suppliers. They offer more than 20 million customers TV and broadband services.