

BCO Network WEBseries
**GIA: mobile infrastructure
deployment under the new regime,
incl. fair and reasonable prices**

13 May 2025

Speakers:

Stratos Fragkouloupoulos, DG CNECT

Ilsa Godlovitch, WIK



Register to **2025 BCO Network** **In-country workshop**

Zagreb, Croatia

11-12 June

To register, please send your contact details to: sofia.profico@broadbandeurope.eu

Agenda - Day 1

Hosted by:



CROATIAN REGULATORY AUTHORITY
FOR NETWORK INDUSTRIES

9.00 | Welcome by HAKOM - Mislav Hebel

9.10 | Welcome by EC - Angelo Cerqueti

9.15 – 10.00 | Connectivity for rural areas, presentation on Croatian aid scheme and BCO activities - HAKOM, Ivana Madžar, Julijana Jančula Bauer, Vesna Gabrić Kešina

10.00 – 11.00 | Quantum-Ready Networks for the Next Generation of Secure Connectivity, Mario Stipcević, Ruđer Bošković Institute

11.00 – 11.30 | Coffee

11.30 – 13.00 | Round table on funding for connectivity post 2027

- Philipp Lausberger, European Policy Centre
- Elena Galindo, BCO Spain
- Marcin Łukasiewicz, BCO Poland
- Iva Novak, Director for Strategic planning and coordination of EU Funds, Croatian Ministry Regional Development & EU Funds
- Guido Acchioni, DG CNECT

13.00 – 14.00 | Lunch

14.00 – 15.30 | Subsea cables discussion group – Future Investment needs for subsea cables

- Rebecca Nottingham, independent consultant specialising in governance, policy and subsea communications
- George Pantos, BCO Greece
- Georgios Tselentis, DG CNECT
- Pietro Pantalissi, DG COMP
- Elizabeth Sandström, BCO Sweden

15.30 – 16.00 | Coffee

16.00 – 17.30 | Round table on the future of the BCO Network

- Keynote by Odysseas Cartalos on study outcome
- Discussion groups on (moderated by Caspar v Preysing, BCO Germany)



Agenda - Day 2

08.30 | Pick up – National Library parking

09.00 – 09.30 | Arrival at Hall of the Music School – coffee

09.30 – 09.45 | Introductory Speech – town Jastrebarsko, TBC

11.00 – 11.15 | Ericsson Nikola Tesla

11.15 – 12.00 | Fiber Optic Deployment On-site

12.00 – 14.00 | **Lunch**

14.00 | End of field trip - Airport drop off, if needed, Zagreb drop off if needed, Return to National Library parking

The Dinner

Wednesday 11 June

Hosted by:

The BCO Network is invited to attend the networking dinner on Wednesday, June 11, at Restaurant [Kaptolska klet](#) a traditional restaurant located in the heart of Zagreb.



Jastrebarsko

Thursday, 12 June

Hosted by:

On the second day, the BCO Network will visit Jastrebarsko, the heart of the wine region and will be invited to a special lunch in one of the wineries.





Gigabit Infrastructure Act (GIA) Regulation (EU) 2024/1309

EC guidance on the application of GIA Article 3

13 May 2025

*Gigabit Infrastructure Act Team
European Commission
DG CONNECT*

Disclaimer: the views expressed are those of the authors and do not necessarily reflect the opinion of the European Commission

Gigabit Infrastructure Act

1

ACCESS TO PHYSICAL INFRASTRUCTURE

- Access to physical infrastructure
- Transparency on physical infrastructure

2

CIVIL WORKS

- Coordination of civil works
- Transparency on planned civil works

3

PERMIT GRANTING and rights of way

- Applications for permits, Deadlines
- Addressing absence of decision on the application for permit
- Exemptions from permits

4

IN-BUILDING PHYSICAL INFRASTRUCTURE

- Standards for in-building physical infrastructure
- Access to in-building physical infrastructure

Definitions, Digitalisation, Dispute settlement, Competent bodies,
Penalties, Report and monitoring, Repeal of BCRD

Intra-EU communications

Access to existing physical infrastructure

Sharing existing physical infrastructure to deploy fibre/5G has a direct impact on cost reduction



Operators (ECN/**tower companies**) can request access to network operators (ECN/**tower companies**/utilities), **public bodies**



Public bodies: MS may define categories of infrastructure to which obligation may not apply, obligation to offer also non-discriminatory access



A reasonable request shall be met at fair and reasonable terms, including prices



Criteria for price setting, e.g. the access provider's business plan and investments



COM may issue guidance on the application



Grounds to refuse access, e.g. safety and public health, network integrity and security



Obligations will not apply if obligations under the EECC or resulting from State aid rules



Tenants of land: negotiate in good faith access/price; NRAs



Optional: private commercial buildings

GIA Article 3 (13): EC Guidance

The EC may issue guidance:

- In close cooperation with BEREC
- After consulting stakeholders, the national dispute settlement bodies and other competent Union bodies or agencies.
- Taking into account well-established principles and the distinct situation across MSs

The targeted consultation:

- Shall be the main interaction with the stakeholders for the guidance
- Will be addressed to NRAs, DSBs, ECNs and service providers, industry associations, individuals
- The Commission seeks for:
 - Feedback on experience from established procedures and practices (application of the BCRD)
 - Feedback with a forward-looking perspective on the provisions of GIA article 3
- Our aim is to cover the widest possible part of article 3, with a special focus on the fair and reasonable terms and conditions, including price

Thank you



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Best practice in implementing GIA for mobile infrastructure

Ilsa Godlovitch

Bad Honnef 13 May 2025

Scope of study and methodology

- Best practice implementation of BCRD as regards deployment of **mobile** infrastructure
 - Conditions to access land, public infrastructure (rooftops and street furniture) for the deployment of mobile infrastructure
 - Conditions to access tower infrastructure
- Main evidence base:
 - Benchmarking of **10 countries**
 - Desk research incl. review of documentation and studies
 - National transposition of BCRD and any updates
 - Transposition of EECC in particular around Art 57 (SAWAP) and RoW
 - Connectivity Toolbox Implementation reports, where available
 - WIK support study for EC on review of BCRD (data from 2022)
 - WIK study for BEREC on infrastructure companies (data from 2023)
 - BEREC 2019 study Pricing for access to infrastructure and civil works according to the BCRD
 - Relevant cases
 - **Interviews** with and information supplied by Cellnex country representatives

- The GIA extends the concept of “network operators” to cover providers of associated facilities as defined in the EECC. This includes towercos
 - EECC Article 2(29): *‘operator’ means an undertaking providing or authorised to provide a public electronic communications network or an **associated facility***
 - EECC Article 2(10): *‘associated facilities’ means associated services, physical infrastructures and other facilities or elements associated with an electronic communications network or an electronic communications service which enable or support the provision of services via that network or service, or have the potential to do so, and include buildings or entries to buildings, building wiring, antennae, towers and other supporting constructions, ducts, conduits, **masts**, manholes, and cabinets;*

- A key element of the GIA is the extension of access obligations to cover physical infrastructure owned or controlled by public sector bodies:
 - GIA Article 3(1): *Network operators and **public sector bodies** owning or controlling physical infrastructure shall meet, upon written request of an operator, all reasonable requests for access to that physical infrastructure under fair and reasonable terms and conditions, including price, with a view to deploying elements of VHCNs or associated facilities. Public sector bodies owning or controlling physical infrastructure shall meet all such reasonable requests also under non-discriminatory terms and conditions.*
 - Physical Infrastructure owned or controlled by public sector means Art 2(4)b GIA “**buildings including their rooftops** and parts of their facades or entries to buildings, and any other asset, including **street furniture** such as light poles, street signs, traffic lights, billboards and toll frames, as well as bus and tramway stops and metro and railway stations.”
 - GIA Art 3(3): Member States may provide that (in certain situations) owners of private commercial buildings should meet reasonable requests for access to those buildings, including rooftops
- Terms for access to land is also covered as follows:
 - GIA Article 3(2): Upon request of an operator, legal persons who are primarily active as tenants of land, or as holders of rights over land, other than property rights, on which facilities are planned to be or have been installed with a view to deploying elements of VHCNs, or who manage lease contracts on behalf of land owners, and operators shall negotiate access to such land in good faith, including on the **price**, which where appropriate shall reflect **market conditions**, in accordance with national contract law.

Scope of PIA rights and obligations in selected countries (1)

Country name	Are private towercos subject to BCRD Art 3 access obligations (i.e. grant access towers)?	Do private towercos benefit from access rights under national BCRD (or equivalent) implementation	Is physical infrastructure access applicable to assets owned by municipalities / public authorities?	If assets of public authorities are covered, does it include land / rooftops / street furniture or only ducts / poles / tunnels etc?	Is there is designated body to co-ordinate access requests to infrastructure owned by public bodies	Is access to commercial buildings covered?
Austria	Towercos are subject to mast sharing obligations.	Unclear whether towercos have rights in relation to RoS (RTR guidance suggests yes, but the law is unclear)	Yes RoW for access to public property and public domain (small antennas) „Rights of Sites“ RoS provision for the installation of masts on public property and domain (only if network sharing is not possible)	Yes (RoW and RoS), land, buildings and street furniture	RTR is DSB for disputes on RoW and RoS According to communication law the NRA should issue an ordinance with reference rates (applies both to RoW and to RoS)	No – RoW to private property but not for masts and antennas
Denmark	Towercos have obligations to grant access under the Mast Act	Towercos do not benefit from access rights as they do not hold relevant authorisations from the authorities	Yes (RoW for the deployment of SAWAP is implemented)	Yes – the Mast Act covers access to public rooftops, chimneys, facades, street furniture, but not land	De facto yes as most properties are owned by one agency (Danish Building and Property Agency) Guidelines for municipalities recommend coordinator	Yes – the Mast act covers owners of masts, buildings and other tall structures of more than 2 floors, silos, wind turbines and masts that are not used for radio communication services
France	Towercos are subject to PIA obligations under the national implementation of the BCRD	Towercos do not benefit from access rights	Yes if they fulfil conditions as "host infrastructure operators"?	Access to install SAWAP implemented but not as foreseen in the EECC	No	No
Italy	Yes – towercos are covered under national BCRD implementation as "physical infrastructure managers"	Yes – towercos are covered under national BCRD implementation as "physical infrastructure managers"	Operators have the right to access infrastructure of public utilities incl. Transportation and airports. This includes street furniture and is not limited to SAWAP	Under transposition of EECC art 57, operators have the right to access any physical infrastructure controlled by national, regional or local public authorities suitable to host SAWAP.	No	No
NL	Yes	Yes	Yes, but specific to SAWAP	For SAWAP access obligations include public buildings and street furniture	No but national Guidelines have been prepared for municipalities with model processes and contracts	No

Scope of PLA rights and obligations in selected countries (2)

Country name	Are private towercos subject to BCRD Art 3 access obligations (i.e. grant access towers)?	Do private towercos benefit from access rights under national BCRD (or equivalent) implementation	Is physical infrastructure access applicable to assets owned by municipalities / public authorities?	If assets of public authorities are covered, does it include land / rooftops / street furniture or only ducts / poles / tunnels etc?	Is there is designated body to co-ordinate access requests to infrastructure owned by public bodies	Is access to commercial buildings covered?
Poland	Yes	Yes	Yes			
Portugal	Yes towercos are obliged to provide access (under Decree-Law 123/2009)	No. Towercos do not have access rights under Decree-Law 123/2009	Yes (municipalities and any public entities holding suitable infrastructure are obliged to provide access to such infrastructure to electronic communication companies) Public authorities with powers over public domain are also bound to grant RoW to public domain (art 23 ECL)	No specific/explicit reference to rooftops / street furniture / land in Decree-law 123/2009 Access to land to be granted by public entities under the RoW regime (art 23 ECL)	No	No
Spain	No	No	Yes, in certain cases (RoW for SAWAP, RoW for public domain)	RoW on public domain RoW for small Antennas SAWAP provisions from EECC implemented without amendment – refer specifically to street furniture	No	Rules on expropriation of private property (declaration of public utility and no other viable and technical alternatives)
Sweden	No	No	Yes	RoW for access to land Access to buildings, installations and objects for SAWAP	No	No
	There is encouragement,	Rights to access buildings	Yes, in cases where Towercos are "Code	Access to land and infrastructure incl. buildings / rooftops is covered. Access to street		Code of operators and right to have a lease of land (incl. building) if

- Most of the countries studied already have access *obligations* extending to towercos (i.e. access to towers) incl. AT, DK, FR, IT, NL, PL, PT or encouragement (UK Code Operators).
- Rights to access physical infrastructure for towercos exist in several countries, but the scope varies. For example, in NL access is available to buildings and street furniture, but only for SAWAP. Access to land is covered for towercos e.g. in AT, UK but not elsewhere
- There are currently no *rights* to access public buildings, poles etc for towercos in DK, FR and PT, ES and SE as rights are limited to ECN. SAWAP access on street furniture is not available to towercos in FR either (restriction to operators deploying VHCHN)

Overview of rules regarding access to public infrastructure

- Most of the studied countries have obligations regarding access for ECNs to infrastructure owned by public authorities, but these vary widely in scope and come under a variety of legal bases
- Some countries provide for regulated access to public buildings / rooftops as well as street furniture for wireless deployment e.g. DK, NL, SE, while others such as AT, SE, UK additionally mandate access to public land. In PT there is no explicit reference to rooftops and street furniture, although public land is subject to rules on RoW.
- In NL deployment rights apply only to SAWAP (also in SE for buildings and street furniture), although in NL Guidelines have been provided for other cases
- Rules regarding access to private property (optional under the GIA in specific cases) are less common – mandated in DK and the UK, in case of public interest
- The countries with the most elaborated procedures regarding access to public infrastructure are DK (Mast Act), AT (RoW and RoS), the UK (Electronic Communications Code) and NL
- However, in several countries, even where rights exist to access public infrastructure, they do not apply to towercos e.g. DK, SE, FR (even for SAWAP), PT. In AT, the law is unclear, although the NRA suggests that towercos are covered.

Illustrative cases

- Austria
 - Public property and public domain (incl. buildings and street furniture) is included in provisions on “Rights of Way” and “Rights to Sites”
 - RoW can be used for the installation of communication lines (excl. Masts) and small antennas. Rights apply to public property and public domain (for both communication lines and small antennas) and private property (communication lines only).
 - RoS applies to the installation of masts, but only applicable if shared use of a mast is not possible. Owners of masts are obliged to provide access to masts (see later slides). According to RTR towercos can use RoS, but law is unclear
- Netherlands
 - Implementation of article 57 of the EEC (for SAWAP) extends to public buildings (not just street furniture)
 - Memorandum on municipal antenna policy: municipalities should in principle make properties available for the placement of both small cells and regular antenna installations (but these might be subject to different conditions).
 - Guidelines on shared use of public infrastructure for the deployment of small cells. Model contracts for deployment in large scale.

Illustrative cases

- Denmark (NB access rights apply to MNOs - towercos are excluded)
 - Mast act includes obligations for all owners (public and private) to provide access to masts, buildings and other tall structures of more than 2 floors, silos, wind turbines and masts that are not used for radio communication services
 - Dispute settlement when no agreement on access conditions: both parties appoint an arbiter to a tribunal. If arbiters do not agree the court appoints an additional arbiter whose decision is final. Procedure for expropriation of real estate also exists, but has been time consuming practice. Disputes regarding technical suitability of existing mast / tall structures can be resolved via an expert opinion from a building expert, while the Danish Agency for Digital Govt (GIGST) can be tasked with providing expert opinions regarding radiospectrum issues (deadline 1 month).
 - Toolbox for rolling out digital infrastructure
 - Non-building Guidelines for pricing of access to assets of municipalities (common market terms are reference), expansion to other public authorities is planned
- UK
 - The Electronic communications Code (ECC) provides a statutory basis under which communications providers (known in this context as 'Operators') can place their apparatus on land or buildings. Code operators are also required (under the Communications Act 2003 framework) to seek to share apparatus with each other. *'Apparatus' is a broad term and refers to what is defined in the Code as electronic communications apparatus; it includes such items as antennae for mobile signals, masts, cabinets, cables, ducts and telegraph poles*
 - Right to have a lease of land (incl. buildings) can be imposed where agreement on access cannot be reached (applies to both public and private property). Public interest must outweigh the prejudice to the landowner

What are the principles?

- Access to physical infrastructure owned or controlled by **network operators** (incl. towercos) and public sector bodies must be provided on **fair and reasonable terms and conditions, including price**
- Access to physical infrastructure owned or controlled by **public sector bodies** (including buildings / rooftops etc) must also be under **non-discriminatory terms** and conditions
- Charges for **access to land** (Art 3(2)) should where appropriate reflect **market conditions**, in accordance with national contract law. Member States may provide guidance on terms & conditions, incl. price to facilitate the conclusion of agreements.
- In certain situations, MS may optionally require owners of **private commercial buildings** to meet reasonable requests for access (including rooftops) under fair and reasonable terms and conditions, and at a **price reflecting market conditions**.

How should “fair and reasonable” be interpreted?

- GIA Article 3(4) establishes principles regarding “fair and reasonable terms and conditions, incl. price” noting that these are intended to avoid excessive prices. Specifically, network operators (incl. towercos) and public sector bodies owning or controlling physical infrastructure should take into account the following:
 - **Existing contracts and commercial T&Cs** agreed
 - **Fair opportunity to recover costs** to provide PIA, taking into account... business models, tariff structures put in place to provide a fair opportunity for cost recovery; and **in the case of electronic communications networks, any remedies imposed by NRAs**
 - Any **additional maintenance and adaptation costs** resulting from providing PIA
 - The **impact of the requested access on the access provider’s business plan, incl. investments in physical infrastructure** to which the access has been requested
 - In the specific case of PIA of operators (incl. towercos) any relevant guidance, in particular regarding
 - **Economic viability of investments** based on their risk profile
 - Need for **fair return on investment** and for any time schedule for such a return
 - **Impact of access on downstream competition** and consequently on prices and RoI
 - **Depreciation of the network assets** at the time of the access requests
 - Any **business case underpinning the investment** at the time it was made, in particular investment in PI used for the provision of connectivity; and
 - Any possibility previously offered to the access seeker to co-invest in the deployment of PI under Art 76 EECC or to co-deploy alongside it
 - When considering operators’ need for a fair return on investment, **their different business models, should be taken into account** in particular in the case of undertakings that primarily provide associated facilities and offer physical access to more than one ECN operator

Access conditions incl pricing for PLA in selected countries (1)

Country name	Fair and reasonable pricing principles established beyond BCRD	If yes, in law or Guidelines? What were those principles?	Are there cases under the BCRD?	Methodologies used to set wholesale charges in BCRD cases	Principles to ensure fair return for VHCN investors?	Principles (if any) for access to towers?	Principles (if any) for access to public infrastructure?
Austria	Yes, ordinance of RTR on compensation for reduction in value Compensation for access to masts in the context of network sharing	Ordinance with reference rates applies to RoW and RoS (see above) Under telecom law, RoW over public domain granted free of charge. One-time compensation for reduction in value of land / property for public and private property owners	Yes, there have been cases.			Construction costs of the shared mast incl. costs of acquisition, ongoing operation costs and other costs associated with the shared use as well as the customary market market (average values can be used as a basis to determine the costs)	Reference rates from RTR Ordinance: One time fee per small antenna (depends on federal state and whether it is on a building or on an object) For greenfield locations, the standardised nationwide reference rate is 10,200 euros, for rooftop locations it is 16,300 euros, in each case as a one-off payment.
Denmark	Mast act foresees dispute settlement if parties do not agree on conditions for access to mast and rules that authority publishes guidelines for access to assets of municipalities. SAWAP deployment fees limited to administrative cost	Guidelines to better mobile and broadband coverage for citizens and businesses and template for municipal mast policy (2022) Guidelines for pricing of access to assets of municipalities (common market terms are reference)					Principles for access to assets of municipalities, but not valid for assets owned by municipality-owned companies
France	Compensation for RoW on public property and public roads, Conseil d'Etat may issue decree on price cap for compensation for off-road public domain	Compensation for RoW on public properties and public roads Fair and reasonable prices for installation of SAWAP	One case (Decision No. 2023-2868-RDPI Dec 2023) on right of access.	N/A case covered only access principles not price	N/A	No cases under BCRD. Closest benchmark is SMP regulation of the upstream wholesale digital terrestrial broadcasting market	N/A

Access conditions incl pricing for PIA in selected countries (2)

Country name	Fair and reasonable pricing principles established beyond BCRD	If yes, in law or Guidelines? What were those principles?	Are there cases under the BCRD?	Methodologies used to set wholesale charges in BCRD cases	Principles to ensure fair return for VHCN investors?	Principles (if any) for access to towers?	Principles (if any) for access to public infrastructure?
NL	No					Obligation to provide access to antenna sites based on reasonable, ND, conditions and rates.	RoW for SAWAP: market conforming compensation, ordinance may define further rules for pricing Model conditions and sample fee for shared use of municipal infrastructure for the installation of small cells The municipality strives for a reasonable fee for the rental of municipal properties or land. It charges a cost-covering fee (levies) for handling requests and making municipal infrastructure available.
Italy	Yes	Law – incremental cost only if cost of asset already recovered via other tariffs designed to ensure cost recovery	Yes (covers transport (metro), utilities (Enel))	LRIC CCA+ mark-up / incremental cost and/or benchmarks depending on situation. For transport, based on ground occupation, dimension of antennas, length of fibre	Focus has been on PIA relating to utilities / transport	No cases under BCRD. However conditions for tower access under S.A and M&A	Only applies to SAWAP (Art 57 EECC), without prejudice to any commercial agreements, installation of SAWAP not subject to contributions or charges
Poland		Amendment of Act on public roads of placing infrastructure in lanes of public roads and of Act on forests with reduction of costs Decision establishing framework conditions for accessing infrastructure of electricity network operators	Yes		Distinctions between the treatment of ECN and non-ECN operators in PIA pricing to take account of the impact of the business case		

Access conditions incl pricing for PIA in selected countries (3)

Country name	Fair and reasonable pricing principles established beyond BCRD	If yes, in law or Guidelines? What were those principles?	Are there cases under the BCRD?	Methodologies used to set wholesale charges in BCRD cases	Principles to ensure fair return for VHCN investors?	Principles (if any) for access to towers?	Principles (if any) for access to public infrastructure?
Portugal	Yes	Decree-Law 123/2009 imposes cost-orientation and requires a Reference Offer. Jan 2020 draft Regulation on pricing principles (but not finalised)	Yes	Cost-orientation. Legislation provided for the approval of a methodology by NRA, but this methodology has not yet been approved	No (not in the draft regulation for access prices to PI)	Draft regulation: Cost orientation, regulated asset base, take into account cost of construction, maintenance, operation and upgrade costs, administrative costs, costs of accompanying interventions	PIA: pricing provisions (including cost orientation) apply to any entities holding suitable infrastructure RoW: Public entitiesMunicipalities only permitted to demand administrative fee for granting RoW in municipal public domain (TMPD) but fees vary considerably. The State and Autonomous Regions cannot charge any fees for the granting of RoW in public domain managed by them (art 169/5 ECL)
Spain	Approach to decision on pricing published by CNMC		Yes (see WIK report for EC 2018)	CNMC references dispute settlements	Yes		
Sweden	No		BCRD study: Cases related to access but no decision on methodologies				
UK	Yes	Ofcom Guidance establishing principles regarding how fair and reasonable prices will be assessed. Regarding land, the value of land occupied by infrastructure has been set as 'alternate use' in the UK via the ECC, hence rental levels tend to be low.					

Overview of approaches

- Focus to date on PIA pricing under the BCRD has been for **ducts and poles**
- In countries where there has been interpretation of the “fair and reasonable” pricing principle, **cost-orientation has been the most common approach** for price setting for ducts and poles but with different methodologies
- Main distinction has been between **pricing for ECN vs non-ECN ducts and poles**
 - Pricing for **non-ECN (mainly electricity)** PIA based on **incremental cost** because of cost recovery from other sources (core business)
 - Fewer cases for pricing for **ECN PIA**, because SMP PIA is preferred over BCRD for telecom ducts and poles, but where principles elaborated, focus on **cost recovery including recovery of investments in infrastructure and common costs + impact on business case**
- No known published cases regarding price-setting for access to **private towers** under symmetric regulation but guidelines point to “**market conditions**”
- For access to **public facilities** such as land, rooftops, to deploy overground telecom infrastructure, approaches vary:
 - Some countries take into account **public interest** (could lead to access **free of charge**)
 - At other extreme, some countries propose “**market values**”
 - Intermediate approach: “**loss in value as a result of provision of access**”

Approaches taken to “fair and reasonable” pricing

Examples of approaches for non-ECN (e.g. electric utility) PIA pricing

- In Italy, the legislation transposing the BCRD provides that the price should not cover the cost incurred by the operator providing access, if this cost has already been recovered via other tariffs designed to ensure recovery of those costs, but should be rewarded for any additional cost incurred in the provision of access i.e. *incremental cost*.
- In Poland for utilities, principles in legislation allow only cost reimbursement for maintenance of infrastructure. In 2019, UKE established “Framework conditions” for access to PIA of electricity network operators -> limited need for dispute resolution
- Spain in a 2019 Resolution regarding access to infrastructure of Barcelona City, CNMC referred inter alia to “the need to take into consideration that, given the nature of Barcelona City Council’s infrastructures (public sewerage), the cost of rent or right of use should be lower than the price applied to the pipelines that are exclusively intended for the deployment of electronic communications networks”
- In Germany for non-ECN, prices are based on incremental costs associated with providing access + a “**reasonable premium**” intended to act as an **incentive** for utilities to offer access. For ECN cost recovery is foreseen and regulatory objectives are taken into account to ensure implications of shared usage on business plan are considered

Approaches taken to “fair and reasonable” pricing

Approaches to ECN PIA (taking into account impact on the business case)

- Limited practical experience in the countries studied of access to ECN ducts and poles under the BCRD (e.g. due to the presence of widespread incumbent ducts and poles regulated via SMP)
- However, some principles have been established in **Spain** under Royal Decree 330/2016 to be taken into account in the event of disputes
 - a. Take into consideration the objectives and principles of the telecommunications law
 - b. Consider the investment made in the physical infrastructure to which access is requested, so as to avoid situations that degrade or unbalance competition due to the lack of investment by certain operators whose business is based exclusively or mainly on the use of the infrastructure of others.
 - c. Take full account of the economic viability of such investments made by the access provider on the basis of:
 - Its risk profile.
 - The **timetable for the recovery of the investment**.
 - The **impact of access on competition in downstream markets and therefore on prices and payback of the investment**.
 - The depreciation of network assets at the time of the request for access.
 - The business model justifying the investment made, in particular in newly built physical infrastructures used for the provision of high speed electronic communications services.
 - The **possibility of joint deployment that has previously been offered** to the access applicant.

Approaches taken to “fair and reasonable” pricing

Examples of pricing approaches for access to public facilities (1)

- French Decree of 1927 on distribution of electrical energy envisaged obligation to share electric poles with other operators so that they could deploy their own network. It was provided that "the new occupant pays, as a right of use, to the first occupant, an allowance commensurate with the **benefits to the community**".
- In Romania, in cases where access is provided to physical infrastructure belonging to public institutions, tariffs should cover the **value implied by the loss of the right of usage**, as well as **compensation for the direct cost**, but should also **take into account tangible and intangible benefits**, which could include facilitating the improvement of digital competencies and infrastructure for the online provision of public services, positive effects on social inclusion and reductions in the digital divide, and the potential facilitate the deployment of intelligent systems such as intelligent traffic lights as well as support for the development of technology parks
- In Austria: RoW over roads, footpaths and public places + access for small antennas in the public domain is free of charge. In contrast, access to public (and private) property e.g. land or buildings / rooftops are subject to one-time compensation in the amount of the **reduction in the value of their land/property**. RTR has provided **Reference rates** in an Ordinance:
 - One time fee per small antenna (depends on federal state and whether it is on a building or on an object)
 - For greenfield locations, the standardised nationwide reference rate is 10,200 euros, for rooftop locations it is 16,300 euros, in each case as a one-off payment.
- In Denmark: Guidelines for municipalities and other public bodies to aid in calculating fees for renting rooftops to ECN operators propose “**market rent**” and provide methodologies

Approaches taken to “fair and reasonable” pricing

Examples of pricing approaches for access to public facilities (2)

- In Netherlands:
 - Municipality should seek a reasonable fee for the rental of municipal properties or land, and should charge a cost-covering fee for handling requests. Municipality can ask for a market-based fee for the shared use of public infrastructure.
 - Guidelines for municipalities in relation to SAWAP note that municipalities can opt for “no compensation, a cost-covering compensation or a market-based competition” as long as there is equal treatment of telecom operators.
- In the UK:
 - 2018 Guidance on access agreements – includes standard terms and templates from Ofcom as well as standardised wayleave agreements from various city councils. Two concepts of remuneration (balance to be determined case by case):
 - Consideration is a one-off or periodic payment representing the value of the right to use the land for the term, on the terms that have been agreed or imposed. It represents, as the Code states, the **market value** of the site provider’s agreement to be bound by the Code rights.
 - Compensation, on the other hand, represents **loss or damage sustained** (or that will be sustained) by the site provider as a consequence of the agreement reached or imposed. It is the monetary equivalent of the loss or damage sustained.
 - A process map is provided to advice on the steps to be taken when calculating fees with reference to these two concepts
 - The UK Guidelines note that in addition to the Code, local authorities should take into account other considerations including:
 - the **economic benefits of making their area attractive for investment** by network providers
 - the **social and economic benefits** of digital connectivity for communities, and the UK as a whole

Approaches taken to “fair and reasonable” pricing

Pricing for access to privately owned towers

- No known *published* dispute resolution Decisions in the countries studied regarding access to privately owned towers – may reflect the fact that access is voluntarily provided
- As regards principles applied for symmetric regulation:
 - In Austria: the law establishes that compensation for shared use should be based on Construction costs of the shared mast including the costs of acquisition, ongoing operation costs and other costs associated with the shared use as well as the **customary market value**. Average values may be used as a basis to determine the costs.
 - In NL: in the **explanatory memorandum** on amendments to the Telecom Code in 2021, in which the site sharing obligation was extended to providers of associated facilities it is mentioned that “reasonable compensation will often be **market-based** compensation”
- Insights from SMP and merger cases (which should in principle apply stricter rules)
 - TDF SMP obligation (broadcasting towers): “**Replicable**” sites subject to **non-excessive pricing**.
 - IT commitments: In the context of M&A, Cellnex committed to provide access to a certain number of sites to requesting operators on a first come, first served basis and on **reasonable and non-discriminatory** terms.
- In contrast to approaches described above, draft Guidelines (not adopted), by ANACOM for application of symmetric regulation under 2009 legislation propose strict cost-orientation

Conclusions and recommendations

- One of the main benefits of changes under the GIA should be to expand access rights to **public infrastructure** for mobile deployment and ensure effective dispute resolution mechanisms in this regard. In this context a Commission Recommendation could:
 - Advocate for a wide interpretation of the assets to be covered, including land as well as buildings, rooftops and street furniture, and clarify that this should not be limited to SAWAP
 - Call for the « public interest » and « effects on investment and deployment of VHCN » to be taken into account when establishing prices for access to public assets rather than VHCN access being used as an additional mechanism to fund / subsidise public services
 - Note that this could result in access being granted free of charge in certain cases, or subject only to compensation for any reduction in value resulting from the access
- Regarding access to **ducts and poles**
 - For non-ECN ducts and poles (e.g. electricity) benchmarks suggest that costs associated with the provision of access and (on an ongoing basis) incremental cost may be appropriate, due to the recovery of costs via other aspects of the business. Incentive mechanisms could be considered in cases where utilities are privately owned.
 - For ECN ducts and poles, recovery of the relevant share of investments and other costs is necessary. Account should be taken of the impact of a reduction in market share and revenues on the ability of the ECN operator to achieve its business plan and make a fair return on its investment.
- Regarding access to **towers**
 - In cases where dispute resolution is required to settle terms around access to tower infrastructure owned by wholesale only providers under symmetric regulation (i.e. not related to SMP), “market conditions” may be an appropriate benchmark. This reflects the fact that (in contrast to ducts and poles) a commercial wholesale market exists and the assets are largely acquired rather than constructed