

Danish Non-Paper on the Commission's Public Consultation on the Evaluation and Review of the Broadband Cost Reduction Directive (2014/61/EU)

Denmark welcomes the opportunity to comment on the Commission's Public Consultation on the Evaluation and Review of the Broadband Cost Reduction Directive (2014/61/EU). Last year Denmark welcomed the Commission's communication on "Shaping Europe's Digital Future", and we are now looking forward to a discussion on future goals for the continued rollout of high-speed infrastructure in the light of Europe's Digital Decade. The COVID-19 pandemic has demonstrated the need for fast and ubiquitous connectivity particularly for remote work, distance learning and research as well as its potential for the green transition. The fast rollout of high-performance digital infrastructures is a pre-requisite for the long term competitiveness and sustainability of the EU. To reach these goals, connectivity in Europe needs to improve. Fostering investment conditions is key, and in this regard the Broadband Cost Reduction Directive can play an important role.

There is an undeniable potential in enabling a more efficient deployment of high speed and high capacity broadband networks – allowing such networks to be rolled out at lower cost, including via promoting the joint use of existing physical infrastructure and joint digging within and across sectors. Accelerating broadband rollout is a key aspect in the digital transformation of our societies as well as in reducing GHG emissions, promoting data driven solutions for environmental protection, thereby contributing towards the targets set out in e.g. the European Green Deal, the Digital Agenda Europe, the Gigabit Communication and the EU Strategy for Energy System Integration. Therefore, Denmark supports a revision and an update of the BCRD. A revised BCRD should constitute a flexible framework with minimum standards in order to accommodate the different market situations and administrative structures within the EU. Indeed, the great variety in administrative structures among EU Member States can in some cases be a limiting factor for meaningfully establishing detailed directive-level rules regarding administrative procedures such as permit granting. Often freedom of choice as to solutions will ensure the best outcome, and in such areas, "toolbox" approaches as set out in the Commission's *Recommendation of 18. 9. 2020 on a common Union toolbox for reducing the cost of deploying very high capacity networks and ensuring timely and investment-friendly access to 5G radio spectrum, to foster connectivity in support of economic recovery from the COVID-19 crisis in the Union* (C(2020) 6270 final) should be considered as an alternative and/or a supplement to directive-level rules.

A revised BCRD allows the opportunity to further strengthen incentives to invest in broadband networks with high speed and high capacity and foster competition at the infrastructure level. In this light, Denmark suggests the following:

- Promoting increased use of joint digging, e.g. via time limits for publication of planned works.
- Considering how to make both granting and seeking access to existing infrastructure, as well as joint digging, more attractive.
- Considering potential new rules or voluntary regimes regarding mast sharing and access to installing antennas on buildings.
- Ensuring that new obligations or administrative burdens are proportionate and avoid harming business cases or creating administrative bottlenecks.
- Ensuring that any new rules on permit granting maintain consistency for permit procedures and digital application platforms between the telco sector and other sectors, and support taking a holistic approach potentially improving permit granting for all sectors simultaneously.

Joint digging – addressing “short notice” issues and cost sharing

Denmark believes that a revised BCRD should further facilitate and incentivise joint digging across sectors. Due to the high speed of decision-making in the telco sector, joint digging can be hampered especially when projects are announced on short notice. By adjusting the current rules related to coordination of works under the BCRD to include time limits for the publication of planned civil works, potential interested parties could more often be alerted to the possibility for joint digging in a timely manner. However, a balance would have to be struck between the publication of plans in due time on the one hand and the prevention of slowing down rollout on the other hand.

Disputes on cost sharing potentially pose another limiting factor. Stronger guidance for Dispute Settlement Bodies (DSB) on cost sharing could contribute to smoother processes, taking into account the telco sector market dynamics, which can be challenging for local authorities to navigate through. In this regard, an assessment on the need for guidelines at EU-level regarding cost sharing would be beneficial, drawing from the experiences or best practices of the Member States.

Infrastructure sharing and joint digging – competition and incentive issues

In Denmark, there has been limited interest in infrastructure sharing in the fixed broadband sector (esp. ducts). This is in large part due to disincentives arising from competition dynamics and issues of control, which also affect the attractiveness of joint digging to some degree:

- Collaborating with a competitor on digging or infrastructure sharing can mean worsened prospects for market shares in an area, especially where both parties are telco operators.
- For the access seeker, joint use of infrastructure and joint digging both mean less control over e.g. digging time plans or subsequent repairs than performing their own rollout.
- Even where the infrastructure owner is not a competitor, having to coordinate subsequent repair works with the owner is a negative aspect of infrastructure sharing.

In revising the BCRD, it should be considered whether the potential for cost reduction and resource-efficiency through joint digging and shared use of infrastructure could be harnessed more fully by finding new ways of mitigating such disincentives and making it more attractive.

Mast sharing and access to tall structures

Denmark has a long-lasting and well-functioning legal regime for sharing telecommunications masts in which some elements go beyond the requirements of the current BCRD, including:

- Access to a mast must be granted even if it requires modifying or rebuilding the mast.
- An obligation for owners of certain other tall structures, such as chimneys and apartment blocks, to grant access to install telecommunications infrastructure (antennas), even where the owner is not a network operator.
- Local authorities hold powers to enforce access obligations and can use these to ensure that there is no need to grant permits for an excessive number of masts.

Denmark encourages the Commission to consider such an approach on a voluntary basis in the revision of the BCRD, which might prove effective in other Member States as well.

General administrative matters, (digital) permit granting and Single Information Point

Denmark is committed to ensuring fast and streamlined digital procedures for permit granting. The EU can play an important role in ensuring this. Yet since the details of permit granting vary greatly within the EU, a variety of alternative solutions may be needed, a situation best addressed by a voluntary “toolbox” approach, such as the one suggested by the *Recommendation of 18. 9. 2020 on*

a common Union toolbox¹, rather than by a directive. To the extent that rules on permit granting in the BCRD are deemed necessary, these should ensure sufficient flexibility to accommodate institutional differences between Member States. It is also important to ensure that obligations and burdens imposed on both the telco sector and public authorities are proportionate and necessary to the aims of the revised BCRD. Additional administrative tasks for authorities could in some cases lead to bottlenecks, which could delay permit granting and other decisions.

When improving permit granting, in order to take advantage of synergies and economies of scale, it is important to take into account that in most Member States, none or few of the permit types necessary for rolling out digital infrastructure are exclusive to digital infrastructure. Most permits are subject to general procedures and requirements across sectors, including in many cases existing digital application platforms. Creating special procedures, platforms or “one stop shops” exclusively for the telco sector risks fragmenting permit granting procedures. Therefore, Denmark suggests that BCRD provisions on permit granting support a holistic approach and enable synergies so that in enhancing permit granting for the telco sector, Member States can streamline or digitalize permit granting procedures more broadly, wherever such potential synergies are apparent. For the same reasons, any new rules or requirements regarding digital application procedures in a revised BCRD should also be sufficiently flexible so as not to require changing or splitting up well-functioning existing digital systems.

Denmark does not support binding rules regarding tacit approval procedures for permits. Permits such as building/digging/planning permits are required by a Member State wherever the MS assesses that the type of civil works/construction in question can hold significant risks for safety or potential to harm planning or landscape interests. Tacit approval procedures for types of construction/works not already covered by a permit exemption could ultimately lead to infrastructure being installed in unsafe or irregular ways. Denmark suggests that provisions on tacit approval procedures in a revised BCRD remain voluntary and flexible, especially where permits required at the MS’ own discretion are concerned.

Where permits from more than one authority are necessary, good coordination among these authorities is important. In this light, the suggestion of a “single window” has been raised, denoting a new role for either a permit-granting authority or for a *de novo* body which is not itself responsible for issuing any permits, but is responsible for coordinating permits from all relevant authorities and/or communicating these jointly to the applicant. While this is one possible solution, Denmark is concerned that local authorities in charge of permit granting may not have staffing and expertise for this role, while a *de novo* body risks having adverse effects such as bottlenecks due to an added administrative layer. The number of cases where more than one authority is involved also differs from Member State to Member State. In some situations, a role for the national telecommunications authority as an *ad hoc* facilitator of inter-authority cooperation can be sufficient. Given the great variety in the exact needs for and potential shapes of coordination within the EU, a revised BCRD should remain flexible on the means to achieve it, potentially supplemented by a “toolbox” approach.

A revised BCRD should maintain that no new mapping obligations are imposed on Member States (recital 21 of the current BCRD). Member States should retain discretion as to the cost-benefit analysis of mapping of existing infrastructure. This analysis depends *inter alia* on the demand for information on existing infrastructure, which may also vary greatly geographically internally in a Member State or between types of infrastructure.

¹ Recommendation of 18. 9. 2020 on a common Union toolbox for reducing the cost of deploying very high capacity networks and ensuring timely and investment-friendly access to 5G radio spectrum, to foster connectivity in support of economic recovery from the COVID-19 crisis in the Union (C(2020) 6270 final)