

In order to achieve the goals of the Federal Government by 2025, planning security for the expansion of fiber-optic networks must be created as quickly as possible. In this context, great importance is attached to the new European telecommunications legal framework. After the European Commission proposed to merge five directives (Accession Directive 2002/19 / EC, Authorization Directive 2002/20 / EC, Framework Directive 2002/21 / EC, Universal Service Directive 2002/22 / EC, Data Protection Directive 2002/58 / EC) in September 2016, the task has now been completed at European level after almost two years. Now it is time to implement the new requirements at national level. In addition, numerous articles of the EECC contain tasks for BEREC, to develop guidelines and definitions that will have a major impact on market development.

In the following, the VATM has summarized the seven main points to which special attention must be paid when implementing the EECC in order to facilitate investment in fiber infrastructure while ensuring sustainable competition and innovation for consumers and the economy:

1. SMP regulation (Article 59.2)

SMP regulation has proven itself in principle and will continue to be the prerequisite for effective competition in the market in the future. The different historical circumstances in the EU Member States do indeed entitle the inclusion of symmetrical regulation (59.2) in the regulatory toolbox. However, symmetrical regulation should only be applied in practice if the national market requires it. For Germany, symmetrical regulation is not considered useful in principle. In the coalition agreement, for example, the federal government consistently relies on the model of non-discriminatory access in the sense of open access. Legal certainty must be created for all investors in Germany in such a way that state intervention in the form of symmetrical ex ante price regulation is permanently avoided in the case of competitive open access offerings. This must be considered in the implementation of the EECC and in the preparation of the BEREC guidelines.

2. Co-Investment (Article 74)

EU law provides for deregulation through Co-Investment but clearly links it with five key conditions that must be cumulatively met:

- a) Permanent access for third parties to co-invest
- b) Non-discriminatory conditions
- c) Preliminary information with six months lead time for potential co-investors
- d) Open network access to the co-investment network
- e) The co-investment offer must comply at a minimum with the criteria set out in Annex IV (open to co-investors, transparent, pro-competitive, financially sustainable) and be concluded in good faith.

The guidelines for co-investments, which are now to be prepared by BEREC, must therefore be clearly written, so as to create legal certainty. The same applies to the transposition into national law as well as to all upcoming decisions of the German regulator and the German Federal Cartel Office on this topic.

3. Open access (Article 74)

Open Access must not be hampered in practice by long procedures. The complex mechanism of article 74 needs to be simplified as far as possible during implementation. Open access helps to prevent expensive duplication of networks, allocate scarce construction capacities correctly and must also be understood as a guarantee for investors, not as a factor of uncertainty because of possible regionalised regulation. Open access is the prerequisite for a fast and efficient comprehensive fiber-optic deployment and at the same time an insurance for the future of German SMEs located outside the cities and generally for the entire German economy. For the retail market, open access means more competition and, for the end user, more choice, better services and lower prices.

4. Mapping and planning (Articles 22 and 29)

With the implementation of Articles 22 and 29 on mapping and planning, further clarification needs to be provided if investment is to be driven and not curbed by bureaucracy. The notification procedure is far too complex and leaves too many questions unanswered. In addition, companies cannot reliably plan investments for three years, even if they depend on other market players and rapidly changing demand. In this respect, sanctions should never be provided if expansion announcements cannot be complied with. Here, BEREC should ensure consistent application of the guidelines and proper regulation.

5. Universal service obligations (Article 85)

In principle we welcome the increase in the quality of universal service. However, in the coalition agreement, the German government defined targets far above all existing universal service obligations for Germany and therefore rightly decided to achieve these particularly ambitious goals in a tax-financed manner, where privately financed deployment is not possible. In the next few years, the deploying companies will invest billions in gigabit networks in order to connect all households to Gigabit-capable access networks by 2025, thereby achieving a maximum supply – instead of a minimal supply, as was previously the case for Germany. In this respect, specifications and discussions about a broadband universal service in the sense of the previous minimum qualities are unnecessary.

6. Definition of VHC networks (Article 78b)

The BEREC Guidelines for the definition of VHC networks (Article 78b) should be worded in a way that supports the development of sustainable FTTB/H access networks. It must be ruled out that transitional technologies are being used for, as this would undermine the goal of the coalition agreement to achieve a comprehensive supply of Gigabit-capable connections by 2025. It is also important to ensure that only future-proof, Gigabit-capable access networks can be funded.

7. Quality of Service (Article 97)

When the Guidelines on relevant Quality of Service parameters (Article 97) of BEREC are developed, it must be clearly described, which services and which quality can be expected. This also needs to apply to the end users of wholesale customers in order to enable a non-discriminatory quality-of-service regime and thus a fair and competitive market. It is also important that the guidelines are consistent with the Open Access regulations.

Brussels / Berlin

21.09.2018