

VATM e. V. • Rue de Trèves 49/51 • B-1040 Brüssel

Per E-Mail:

European Commission
DG Communications Networks,
Content and Technology
Rue de la Loi 51
1000 Bruxelles
Belgium

Contact	E-Mail	Telephone	Date
Lilyana Borisova	lb@vatm.de	+32-2-446 00 77	01.07.2024

White Paper: How to master Europe's infrastructure needs?

here: Position Paper of VATM e.V. Germany (does not include business and trade secrets)

We hereby submit the views of VATM and our member companies with regard to the *White Paper: How to master Europe's infrastructure needs?* (in the following, WP) published for open consultation by the European Commission on 21 February 2024.

VATM welcomes the public consultation and takes the opportunity to provide comments on the views and ideas put forward in the WP.

VATM takes note that the advanced connectivity infrastructure of the future is seen as a lever towards productivity-boosting digital technologies and services essential for the future European competitiveness.¹ In this context, the WP opens the discussion about expanding the scope of what we currently understand to be the telecommunications market towards cloud infrastructure and services due to a growing convergence between the cloud and the connectivity infrastructure. Furthermore, it puts an emphasis on “*high-quality, reliable and secure connectivity*” available for everyone, including in rural and remote areas, while acknowledging the overarching role of regulation for securing the investments needed to achieve this objective. Building on these considerations, the WP proposes a modernisation of the regulatory framework. This step, in the Commission's view, has the potential to contribute to the copper switch off and full fiber transition or a full-scale 5G implementation (areas covered by the existing telecommunications regulatory framework), promote the development of cloud-based infrastructures and the scale-up of operators within the single market, and positively impact the implementation and use of emerging technologies such as quantum communications.²

¹ EUROPEAN COMMISSION (2024): *White Paper: How to master Europe's infrastructure needs?*, P. 4.

² *ibid.*

In VATM's view, **this amounts to a substantial shift in political priorities**. While the so compiled list of “new” priorities resembles and even partially covers existing policy goals such as the ones set by the European Electronic Communications Code (in the following, EECC)³ and the Digital Decade Policy Programme 2030 (in the following, the Digital Decade)⁴ it opens the question how these “new” priorities relate to the “old” ones.

Surprisingly, the WP does not build on sound empirical evaluation of the previous policy. Instead, it broadly dismisses the results of prior policy as insufficient to meet the (rather roughly sketched) challenges of the future. In VATM's view, this is a flawed approach as it breaks with systematic policy review that has been a guiding principle of EU policymaking in the past. Therefore, **the WP represents a discontinuation of the systemic policy evolution in the past three decades as it clearly puts forward an arbitrary set of policy goals and ideas**. And while we understand and support these goals previously identified and agreed upon, we contest the rest of the compiled “new” goals as there is little to none background evaluation in the WP providing ground for their long-term pursuit.

So, by stating that the WP “*identifies challenges and discuss possible scenarios for public policy action*”⁵ it signals an approach concentrated on identifying the problems on the market. Nevertheless, the solutions identified in the scenarios listed in the WP persistently put forward public policy actions that go beyond a mere problem definition and discuss changes and amendments in the regulatory framework without offering a thorough impact assessment due in all cases of altering a piece of acting legislation.

In this context, VATM provides its comments on the contents of the WP as a problem definition that might be used on a later stage for the preparation of impact assessment(s) and evaluation of legislative acts relevant for the telecommunications market. However, we request that the European Commission (in the following, the Commission) takes duly note of the considerations raised above for future reference.

³ EECC (2018): **Art. 3 (2) – General objectives:** (1) promoting **connectivity** and access to, and take-up of, very high capacity networks; (2) promoting **competition** in the provision of electronic communications networks and associated facilities; (3) contributing to the development of the **internal market**; (4) promoting the **interests of the citizens** of the Union, by ensuring connectivity, (...) enabling maximum benefits in terms of choice, price and quality on the basis of effective competition (...). ([Directive \(EU\) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code \(Recast\)Text with EEA relevance. \(europa.eu\)](#), last accessed 17.06.2024).

⁴ 2030 Policy Programme “Path to the Digital Decade” (2022): Art. 4 (2) (a) all European households are covered by a Gigabit network, with all populated areas covered by 5G. ([EUR-Lex - 52021PC0574 - EN - EUR-Lex \(europa.eu\)](#), last accessed 17.06.2024).

⁵ EUROPEAN COMMISSION (2024): *White Paper: How to master Europe's infrastructure needs?*, P. 5.

In conjunction with the issues the WP explores, VATM would like to highlight our views, taking utmost account of the developments on the German market:

- A. Based on the extensive discussions on investments and their role for the sector, VATM welcomes that the Commission addresses the topic and targets the securing of a favourable investment climate for the sector. However, we regretfully note that in its assessment the WP completely disregards the contributions, interests and needs of the alternative providers. Therefore, VATM demands that for future policy initiatives, the Commission takes an impartial view on the market and adopts an evidence-based approach towards its findings.
- B. Referring to consolidation, VATM maintains that consolidation is welcome as long as it is market driven, resulting from the organic development on the market and compliant with the existing regulatory and competition rules.
- C. With regard to the suggested policy scenarios, VATM maintains that the scope and the objectives of the EECC must be preserved. Any alteration should be a subject of an extensive evaluation and public consultation. However, in case of targeted reform of the EECC objectives, we demand that upholding the principal of competition must take a more central role as it is the lever, on which the sustaining and improvement of the rest of the objectives rely.
- D. With regard to copper switch-off, we welcome the Commission's initiative to target the topic. However, VATM warns against a premature switch-off date. Thus, the proposed target dates for 2028 and 2030 are most likely not suitable for Germany. Indeed, establishing regulatory certainty prior to starting the actual switch-off is even more necessary. In this sense, we demand the proactive involvement of the NRA in close dialogue with the industry to counter a switch off entirely dependent on the willingness of the incumbent.
- E. Finally, we maintain that the regulatory framework remains essential for sustaining the competition dynamics on the telecommunications market. Therefore, the framework must be sustained and adapted to the specific requirements of copper switch-off. We emphasize that role of the Market Recommendation remains essential for the de facto enforcement of the framework and must be sustained.

1. State of the telecommunications sector: Discussion

1.1 Investments and infrastructure deployment

Chapter 2: Trends and Challenges in the Digital Infrastructure Sector of the WP opens with a discussion on the performance of the EU regarding the deployment of high-speed infrastructure, emphasizing in particular the roll-out of fibre and 5G,⁶ in comparison to other regions. The points put forward focus on the high deployment scores of other countries, notably Japan and South Korea (pertaining to fixed connectivity)⁷, and China (in terms of 5G deployment)⁸, and aim at creating a sense of urgency for the deployment targets of the EU laid out in the Digital Decade, as delays in fulfilling the targets “*would represent a critical vulnerability for Europe’s economy as a whole*”⁹. However, it is also stated that the progress of these regions is driven by clear strategies systematically pursued over the course of a longer period. For reference, the Digital Decade was adopted in December 2022¹⁰. Furthermore, the advancements of these countries have been amplified by state policies towards inducing the competition dynamics on the market¹¹ and increasing the digital skills of the population in order to boost the demand^{12,13}. In Europe, despite the focus on the connectivity targets and the digital competitiveness, such as the number of edge nodes and increasing the use of data-based solutions by the business, the Commission has not yet introduced concrete measures related to digital skills - another area clearly addressed by the Digital Decade, which would have a profound effect on the citizens’ behaviour and, therefore, on the progress of the other sets of Digital Decade objectives.

In the context of international comparison, **the ultimate conclusion of the WP is**, despite scoring ahead of the US development, that **the EU is lagging behind in infrastructure deployment**. Therefore, any further delay jeopardizes the possibility to enhance the development of high value-added digital technologies.¹⁴

⁶ In its wording, the WP systematically singles out fibre and 5G stand-alone as the prominent technological developments, completely abandoning the concept of Very High Capacity Networks (in the following, VHCN) as established in the EECC.

⁷ EUROPEAN COMMISSION (2024): *White Paper: How to master Europe’s infrastructure needs?*, P.5.

⁸ *ibid.* P.6.

⁹ EUROPEAN COMMISSION (2024): *White Paper: How to master Europe’s infrastructure needs?*, P.6.

¹⁰ [Decision \(EU\) 2022/2481 of the European parliament and of the Council of 14 December 2022 establishing the Digital Decade Policy Programme 2030](#) (last accessed 17.06.2024).

¹¹ OECD (25.10.2021): *12 Ways Korea is Changing the World: A Global Powerhouse in Science and Technology*. (oecd.org) ([A global powerhouse in science and technology \(oecd.org\)](#), last accessed 17.06.2024).

¹² NIKKEIASIA (6.06.2022): *Japan Government to shift vocational training focus to digital Skills: Digital-linked tutoring to top 30% of public courses to improve productivity*. (www.asia.nikkei.com) ([Japan government to shift vocational training focus to digital skills - Nikkei Asia](#), last accessed 17.06.2024).

¹³ MINISTRY OF SCIENCE AND ICT (22.08.2022): *Korea to Nurture One Million Talent to Lead the Digital Era*. (msit.go.kr) ([Press Releases - 과학기술정보통신부 > \(msit.go.kr\) \(22.08.2022\)](#), last accessed 17.06.2024).

¹⁴ EUROPEAN COMMISSION (2024): *White Paper: How to master Europe’s infrastructure needs?*, P. 5-6.

Building on this, the WP explores the progress on the Digital Decade connectivity targets made so far and the way forward.¹⁵ It underlines that the only way to secure the robust fibre coverage and 5G stand-alone and improving Europe's chances to achieve these objectives by 2030 is by ensuring continuous investments in digital infrastructure, meaning that **catching up on the connectivity targets is directly related to the investment conditions in Europe.**

Investments in digital infrastructure and their availability are one of the discussion cornerstones in the WP as they have a direct impact on the EU policy goals. The WP builds a direct link between the investment landscape in the EU and the scenarios for public policy actions *“that aim to incentivise building the digital networks for the future, master the transition to new technologies and business models, meet future connectivity needs of all end-users, underpin competitiveness of our economy and (...) the Union's economic security”*¹⁶.

Therefore, the WP highlights the notion that implementing the suggested scenarios would create the right conditions for the telecommunications sector to meet the investment needs¹⁷, and to provide full coverage of *“capable digital networks”*, which represents the broad justification of the interventions proposed in the scenarios.

Based on the study conducted by WIK Consult for the Commission on the *Investment and funding needs for the Digital Decade connectivity targets*¹⁸, the WP recognises that despite the available subsidies the lion's share of investments must be conducted on the basis of private funding. In this sense, the WP acknowledges the role of the telecommunications companies and the financial burden that falls on them.

In this regard, VATM recognises the effort of the Commission to analyse the situation and map the problems of the sector. We welcome the efforts to create a more favourable investment climate needed to achieve the Digital Decade targets. However, **in this analysis¹⁹ the Commission fails to acknowledge the contributions of the alternative operators, their investments and effort, or the concrete issues they face.** By framing the problem in this particular manner, the WP directly undermines the weight of the investments made by the alternative operators so far and creates uncertainty towards their ability to perform on the market in the future.

¹⁵ *ibid* P.5.

¹⁶ *ibid* P.5.

¹⁷ OCKENFELS, M., ELTGES, F., PLUECKEBAUM T., GODLOVITCH, I., WIK CONSULT (2023): *Investment and funding needs for the Digital Decade connectivity targets*, P.7-8.

¹⁸ *ibid*.

¹⁹ EUROPEAN COMMISSION (2024): *White Paper: How to master Europe's infrastructure needs?*, P. 11.

On top of that, it is deeply worrying that the Commission's reasoning on the concerning financial situation²⁰ of the sector relies entirely on a single source.²¹ As the cited ETNO Report²² gives a consolidated perspective on the former incumbent companies for Europe this might be deceptive when assessing the economic situation of the entire sector, or even to individual incumbents operating in the single Member States (in the following, MS).

For reference, Deutsche Telekom, Germany's historic incumbent company, is currently one of the TOP5 best performing companies in the DAX, ranking number four at the moment.²³ If we are to take this score as a sign for market confidence and, therefore, ability to attract investments, we might presume that the company would have a far more advanced fibre footprint, as it appears that the company is attractive on the financial market.

However, contrary to this score and the views on take-up and investments expressed in the WP,²⁴ instead of driving up the deployment and take-up of high-speed fibre connections in Germany Deutsche Telekom still chooses to predominantly market its legacy copper infrastructure. As the most recent *Dialog Consult / VATM Market Analysis of Gigabit Connections 2024* shows, Deutsche Telekom has an approx. 20% share of Gigabit connections in Germany, or a total of 9.2 mil Homes Passed.²⁵ Nevertheless, only 1.2 mil of those have been taken up.²⁶ For comparison, the alternative operators serve more than 90% of the 13.2 mil Homes Activated in Germany (12 mil), being the main factor for raising the demand for Gigabit connectivity, dominating the investments in fibre and driving up the roll out.

This only goes to show the paramount importance of using an empirical approach relying on multiple data points to draw conclusions and demonstrates once again the clear neglect of the WP towards the alternative telecommunications companies, indicating that their views and contributions to the market developments are **not taken into account.**

In Germany, the alternative operators are the ones driving forward the fibre deployment. For the past couple of years, we have observed a strong trend towards an investment surge by long-term oriented private capital. Those private investments put forward by different market players, largely alternative operators, tally up more than EUR 50 bln. This number comes to show that the German telecommunications market has not peaked yet. As demonstrated in the Commission's *Report on Broadband Coverage in Europe 2022* the German market is one of the least developed in the EU in terms of broadband coverage and fibre

²⁰ *ibid.* P. 10.

²¹ *ibid.* P.10-11.

²² ETNO (2024): *State of Digital Communications 2024* (<https://etno.eu/component/attachments/attachments.html?task=download&id=8407>, last accessed 17.06.2024).

²³ *Largest DAX companies by market cap* (17.06.2024) ([Largest DAX companies by market cap \(companiesmarketcap.com\)](https://companiesmarketcap.com) last accessed 17.06.2024).

²⁴ EUROPEAN COMMISSION (2024): *White Paper: How to master Europe's infrastructure needs?*, P. 31.

²⁵ DIALOG CONSULT / VATM (2024): *Market Analysis of Gigabit Connections 2024*, P. 8. (https://www.vatm.de/wp-content/uploads/2024/06/6.-Market-Analysis_Gigabit-Connections-2024-English_final.pdf, last accessed 17.06.2024).

²⁶ *ibid.* P.13.

deployment.²⁷ This is mainly due to the fact that “*the incumbent has historically prioritised VDSL upgrades to existing DSL networks as opposed to investing in the typically more expensive FTTP technology*”²⁸ and, from the Dialog Consult / VATM Market Analysis, it is evident that this continues to be the case. While other EU countries like Spain and France had to base their connectivity strategies on fibre (due to lack of suitable copper network) - aided by existing ducts and labour-saving deployment techniques like aerial, as well as the systematic implementation of the national broadband deployment plan introduced by the government early on,²⁹ Germany endorsed Deutsche Telekom's vectoring strategy³⁰. Consecutively, for a long period the market expected the Deutsche Telekom to begin the migration from its copper network to an all-out fibre network. However, in an attempt to sweat its assets and broaden its end customer base as much as possible, the incumbent chose to upgrade its copper network by means of vectoring. Today, the incumbent still has a basis of more than 60% captive customers dominating the telecommunications market and holding a position of significant market power (in the following, SMP). However, driven by the growing digital needs and accelerated by the almost completely digital character of the day-to-day life during the Covid19 pandemic, the market dynamics have shifted, and the country entered into a phase of fierce rollout competition among companies, which are seeking to exploit the so called *first-mover-advantages*. These companies depend largely on private capital which values above all a green field approach with the aim to invest in long-term efficient network infrastructures. Therefore, they are active in the rural and suburban areas where they would compete mostly only with the legacy copper network and rely on the migration dynamics and ultimately copper switch off.

In this sense, the WP also highlights that a higher take-up of fibre networks would have significant positive effects on the profitability of all operators emphasising that “*take-up is of paramount importance, as it affects the capacity of the sector to invest*”³¹, especially when paired with copper switch-off.³²

Building on everything said above, it is evident that the alternative telecommunications providers lead the wave of investment in fibre infrastructure in Germany despite the different challenges they face. Regardless of the various advantages Deutsche Telekom has had historically, only after facing the reality proving the business case of the competitors the incumbent was forced to join the ongoing roll-out competition. Therefore, **VATM urges the Commission for its future assessments of the investment climate on the**

²⁷ EUROPEAN COMMISSION (2023): *Report on Broadband Coverage in Europe 2022: Mapping progress towards the coverage objectives of the Digital Decade*, P. 34, Figure: Overall FTTP and DOCSIS 3.1 Coverage by Country, 2022. (<https://ec.europa.eu/news-room/dae/redirection/document/98574>, last accessed 17.06.2024).

²⁸ *ibid.* P.34-35.

²⁹ ARCEP (2023): *Le plan France Très Haut Débit (PFTHD): Qu'est-ce que le plan France Très Haut Débit? (Le plan France Très Haut Débit (PFTHD) | Arcep*, last accessed 9.05.2023; [cahiers-des-charges-AAP-PNTHD-fev2013.pdf \(arcep.fr\)](#), last accessed 9.05.2023).

³⁰ BUNDESNETZAGENTUR (9.07.2013): *Bundesnetzagentur submits a Vectoring Decision to the European Commission*. (www.bundesnetzagentur.de) ([Bundesnetzagentur - Press - Bundesnetzagentur submits vectoring decision to European Commission](#), last accessed 17.06.2024).

³¹ EUROPEAN COMMISSION (2024): *White Paper: How to master Europe's infrastructure needs?*, P. 6.

³² *ibid.* P.31.

telecommunications market to also include data on the contributions and burdens of the alternative operators in order to provide a clear and impartial view on the financial health of the sector.

1.2 Regulatory landscape and consolidation

The WP addresses at length the conditions on the telecommunications markets in Europe in conjunction with a Single market for telecommunications networks and services. To the extent that the development of the Internal telecommunications market is one of the objectives listed in the EECC, the question how and under what conditions a Single telecommunications market is possible and meaningful to pursue is a relevant one. It is adjacent to the discussion the WP opens on whether by enabling the operators to grow their operations easily and organically across borders would attract more investments.

The conclusion the WP relatively quickly reaches is that the “*fragmentation of the EU market for telecommunications networks and services along national borders impacts the ability of operators to reach the scale needed to invest in the networks of the future*”³³. The highlighted way forward is, therefore, to remove the obstacles in the face of “*notably burdensome and/or fragmented sectoral regulation*”, which provides for convergences between the regulatory approaches across the MS.

VATM would like to emphasize the positive impact the regulatory framework has had not only for the sector, but also for the economy and society. As the framework has been conceived to reflect the needs of the market players and to adapt to the developments in the different MS, we underline that the sectoral regulation is the main competition driver, which lays down the conditions for investment in infrastructure deployment, innovation, and consumer welfare.

From our point of view, competition continues to be the cornerstone of the EU’s economic legal order and has consistently benefited the consumers and the business. In fact, competition without distortions by market power – on infrastructure and service level - is a prerequisite for economic growth, delivering significant societal advantages and acting as a powerful driver of innovation and efficiency. Complementary to this, safeguarding a regulatory framework based on SMP or market failure providing competitive wholesale offers will remain key for competition and infrastructure investments. Enabling fair access conditions and agreements with SMP companies on the fixed market, as well as establishing the best possible framework conditions for high-performance networks, their fair usage and new innovative services on these networks in the national context remains essential.

In this sense, there is indeed fragmentation, being a function of the flexibility of the framework to adapt to the national circumstances. Therefore, **we urge the Commission to ensure that MS share a common understanding of how to improve the conditions for necessary private investments into**

³³ *ibid.* P.15.

telecommunications infrastructure without undermining competition. The current regulatory framework, creating and safeguarding competition, should not be discarded, but further developed for markets that have already reached an advanced stage of liberalisation. We remind the Commission that under the current EECC regime the National Regulatory Authorities (in the following, NRAs) hold the discretionary power to deregulate if on the basis of conducted market analysis and impact assessment it is established that the competitive forces on the market are self-sustaining, and no additional remedies are necessary. Therefore, if there is evidence that it is not necessary to apply the regulatory framework, the NRA has the option to abstain from enforcing the rules. This means that there is no real need to remove the framework or important elements of it altogether.

We acknowledge that the WP's perspective is rather linked to industrial policy³⁴ aiming to master *“the transition to new technologies and business models”*³⁵. However, **the only way to invest in and deploy “the networks of the future” and achieve efficiency gains requires long-term and stable framework conditions with fair competition to promote both user welfare and innovation.**

As stated above, private investments are the primary driver of network deployment and in Germany, the alternative operators are proactively investing. In this line, VATM opposes consolidation as a policy response to investment requirements, given that the structure of the European telecommunications sector and the size of the players are not a matter of public policy. **To the extent such consolidation holds economic potential for market players, it will happen organically.** VATM does not currently see obstacles in telecommunications regulation that structurally prevent such consolidation from happening. The notification mechanism requiring approvals from the Commission or national antitrust authorities based on the market power of the parties involved, is an integral part of EU competition law. If there is a need to address a shifting economic landscape, VATM believes that the Commission should ensure that, in cases where consolidation is market-driven, it can be examined and implemented in efficient manners.

Although the WP confirms this view by stating that *“cross-border consolidation in itself has never been a problem from a competition standpoint because of the national dimension of the EU electronic communications markets”*³⁶ it is presented as a rather bitter consequence of *“the persistence of national regulatory frameworks and the lack of a genuine single market”*³⁷.

³⁴ *ibid.* P.14.

³⁵ *ibid.* P. 5.

³⁶ *ibid.* P.14.

³⁷ *ibid.*

VATM reminds the Commission that the original idea behind codifying the European telecommunications framework was to provide a common basis for comparison, openness, and exchange of experiences. The primary aim has always been to bring the national markets closer together, not to make them identical. Today, in terms of competition dynamics, size and maturity of the market, or stage of infrastructure deployment, there is still strongly converging landscape in Europe. Therefore, it would not be appropriate to apply one-size-fits-all-approach without ensuring the required level of flexibility and adaptability to the national conditions and particularities.

VATM maintains that the Commission's priority must be to safeguard competition, and that any consolidation should be carefully assessed to ensure it does not compromise market dynamics while upholding the principles of fair competition. This is especially important for Germany where **the regained market power of the incumbent can be attributed to a serious competitive deficit due to ineffective regulation.**

In order to remove some significant bureaucratic hurdles that are real barriers for achieving smoother operations within the EU, VATM strongly advocates for increased harmonization in the areas of consumer and data protection to support market players operating across Europe, providing services to consumers and businesses. In addition, the Commission should focus on an integrated policy approach ensuring that goals for security, resilience and sustainability do not stifle investment incentives as the telecommunications industry is already heavily regulated. Therefore, additional obligations not pertaining to the core role of the sector (operation of networks and provision of services under a framework of fair competition) must be carefully evaluated and aligned with the policy goals and the prevalent economic conditions.

Building on all said above, **VATM urges the Commission for its future policy and legislative initiatives to focus on ensuring competition on the telecommunications market as this remains the basis not only for investments and a high market performance, but also for further approximation of the market conditions across the MS** vital for the establishing of a Single market.

2. Views on Pillar II: Completing the Digital Single Market

2.1 Objectives

VATM observes that the chapter *Pillar II: Completing the Digital Single Market* of the WP concentrates on considerations and suggestions emphasizing the need for updated regulatory framework reflecting new essential objectives and with an expanded scope of application to keep pace with technological advancements and market dynamics.³⁸

According to the WP one of the main objectives of the EECC was to enhance connectivity by encouraging investments in very high-capacity networks. Nonetheless, as to the state of the connectivity targets of the Digital Decade discussed above, the EECC is deemed to be unsuccessful in achieving this due to delayed implementation by several MS and the complexity of the framework itself. Another objective of the EECC is to promote competition as it is a mean of driving investments based on market demand. However, as competition as a priority has already served its purpose (on price and affordability)³⁹, and considering “*recent technological advancements and global challenges*”, it is suggested to incorporate broader dimensions, such as sustainability, industrial competitiveness, and economic security into the regulatory framework.⁴⁰

Finally, the WP highlights the particular role of convergence between telecommunications networks and cloud services recognising a need to reconsider the scope of the current regulatory framework and expand it.⁴¹

To this end, VATM resolves to the opening remarks above addressing the diverging strategic goals and policy priorities set in the EECC and in the White Paper. We take the opportunity to underline (again) that **should any changes in the acting legislation occur**, following the long-established rules of transparency and due procedure, **these should be a subject of a public discussion in the form of a public consultation, backed by empirical evidence and impact assessment.**

In this context, we see this expansion of the regulatory framework as being closely linked to a regulatory simplification, which is basically equivalent to deregulation.

And while we are in principle in favour of simplification – for example, by deleting irrelevant but de facto unused provisions of the EECC - regulation based on the SMP regime remains the fundament on which the bottlenecks that still exist in many markets, in Germany in particular, can be tackled.

³⁸ *ibid.* P.25.

³⁹ *ibid.* P.15.

⁴⁰ *ibid.*

⁴¹ *ibid.*

Therefore, VATM urges the Commission, for the views expressed in *Scenario 4*⁴², to provide additional clarifications and technical and economic evaluation on the tangible dimensions of the changes this Scenario pursues, as vague wordings, such as “*global magnitude and impact of the technological developments and of any possible regulatory changes*”⁴³ do not contribute to a fruitful discussion or development of common understanding.

However, we support the idea expressed in the Scenario 4 that the regulatory framework should ensure a regulatory level playing field. This is particularly applicable in the context of the EECC’s categorisation of services provided, laying down regulatory obligations for the providers of internet access services and number-based interpersonal communications services (NBICS) while providers of number-independent interpersonal communications services are exempted of the scope of these provisions. We emphasize that in its nature, these services are the same. In addition, we note that the situation is similar with regard to the provisions on consumer protection. In this line, we highlight the need of measures targeting the dismantling of bureaucracy and ensuring that the telecommunications providers have the possibility to operate on equal terms with other market players.

2.2 Mobile communications

Due to diverging positions within the association, VATM will only comment on mobile communications issues selectively. The absence of comments on other mobile communications issues addressed in the WP does not allow any conclusions to be drawn about the association's position on these issues.

As the WP addresses the mobile communications field in detail, we take the opportunity to express our views on issues having a direct impact on the efficient functioning of the networks.

a. 5G Corridors

As the promotion of 5G cross-border corridors along transportation routes throughout Europe is of significant relevance and has extensively been addressed in Pillar I of the WP, VATM would like to emphasize the importance of facilitating the seamless deployment of these corridors. Currently, however, the permitting processes for mobile telecommunication towers are often protracted and involve multiple stakeholders, including building, nature conservation, monument protection, and regulatory authorities. In the case of corridor projects along railways or motorways, where a substantial number of towers are erected, the

⁴² *ibid.* P.36.

⁴³ *ibid.*

situation becomes even more intricate due to the involvement of additional stakeholders such as railway, motorway, and tunnel operators.

Although the Gigabit Infrastructure Act (GIA)⁴⁴ may expedite permitting processes, it does not alter the requirement for obtaining permits for each individual tower. This approach does not align with the roll-out practice for 5G corridors, where the entire corridor tower infrastructure is typically planned and constructed as a single, cohesive layout. The permitting procedure should reflect this reality, necessitating a permit for the entire corridor rather than for each individual tower. We, therefore, propose the introduction of a corridor permit for towers alongside railways and motorways. This measure would alleviate the bureaucratic burden, simplify and streamline the process, and thereby significantly accelerate the roll-out.

b. Electromagnetic fields budget

In addition, VATM takes the opportunity to highlight, once again the vital role of competition and customer experience, also on the mobile market. In this sense, to ensure a seamless user experience and a wide range of choices for consumers, mobile network operators (MNOs) must be able to deploy their networks wherever coverage is required. At the same time, they must comply with national safety regulations for electromagnetic fields (EMF). The authorization procedures for sites within the EU vary, with some sites requiring only EMF calculations without the need for on-site measurements. However, this can lead to an inefficient use of the EMF budget and its exhaustion, particularly in urban areas where antennas are often installed in close proximity or even at the same location.

To accelerate authorization processes, we request that the Commission consider providing all stakeholders, including TowerCos, with information on the utilised EMF budget, within the constraints of competition law, trade secret protection, and the security of critical infrastructure. The objective is to fully realise the potential of MNO co-location while ensuring emission protection. This transparency measure would enable citizens and businesses to gain faster access to high-quality connectivity, irrespective of the network operator chosen.

2.3 Copper switch-off

The WP identifies the transition from legacy copper networks to newly deployed fibre networks as a critical step to achieve the EU's digital and green objectives. This transition aims to support the Digital Decade 2030 targets, already addressed above, envisioning that by the end of the decade all end-users would be covered by gigabit networks. In addition, the copper switch-off process is expected to reduce operational

⁴⁴ Regulation (EU) 2024/1309 of the European Parliament and of the Council of 29 April 2024 on measures to reduce the cost of deploying gigabit electronic communications networks, amending Regulation (EU) 2015/2120 and repealing Directive 2014/61/EU (Gigabit Infrastructure Act). ([Regulation - EU - 2024/1309 - EN - EUR-Lex \(europa.eu\)](#), last accessed 17.06.2023).

costs for operators and promote more sustainable infrastructure due to lower energy consumption. The WP discusses that the process would require continuous coordination and collaboration to avoid reversing competitive gains and reestablishing of monopolistic patterns.

However, *Scenario 5a*⁴⁵ focuses on the idea of facilitating a rapid transition with an end date 2028 based on the coordinated efforts of the market players and the NRAs to ensure a smooth migration. **VATM welcomes the initiative of the Commission to address the topic in the WP.** We observe that there is a need for an impulse on the side of the regulators and legislators alike towards placing the topic on their agenda and suggesting some meaningful measures for the planning and preparation of the market. **However, considering the situation in Germany, we find that setting 2028 or 2030 as an end date would be premature and rather cause a turmoil on the market instead of securing foreseeability and a smooth transition.**

From the vantage point of the development in Germany, we can confidently state that coordination and collaborative efforts of all market players and the NRA are a welcome measure, which, based on the initiative of the NRA⁴⁶, Bundesnetzagentur (in the following, BNetzA) has been adopted in Germany. However, after three years of regular coordination and collaborative efforts we can equally confidently draw the conclusion that these efforts have not yet provided for any legal certainty towards the copper switch-off or for a systemic planning how and under what conditions the migration should happen. In this sense, no voluntary collaborative measures can replace the role of a regulatory framework, which foresees concrete actions, rights, and/or obligations, as well as the means for their enforcement.

Having said that, VATM maintains that fibre deploying operators, access seekers, regulatory authorities, and policy makers, together with the incumbent must find common way forward. In order to successfully bring the German telecommunications market into the fibre world, **a concrete migration concept should be agreed upon.** In order for this to be possible, Deutsche Telekom must give up on its predatory practices, such as strategic overbuild and investment crowd out. The years of coordination and collaborative efforts have shown that if Deutsche Telekom does not give up its far-reaching strategic wholebuy refusal (i.e. bitstream provided by alternative FTTH infrastructures), there would be no migration any time soon. This means that copper switch off must be put on the policy agenda with a high priority and be addressed with timely and concrete measures by the NRA. We underline that the WP puts investments in telecommunications infrastructure in a direct and prominent relation with the current and future development of digital services and technologies. By doing so, the Commission sends a clear message to the market players that the operators which take risks and invest, rolling out the networks of the future, are the first ones to be

⁴⁵ ibid.

⁴⁶ Gigabitforum: „Die Bundesnetzagentur hat mit der Einrichtung des Gigabitforums im März 2021 einen Prozess gestartet, um mit dem Markt und den zuständigen Ministerien über investitions- und wettbewerbsfördernde Rahmenbedingungen für den beschleunigten Übergang von Kupfer auf Glas zu diskutieren.“ GIGABITFORUM.DE (2024). ([Bundesnetzagentur - Gigabitforum - Gigabitforum](#), last accessed 17.06.2024).

taken into account when the time for regulatory amendments is ripe. The WP signals that this would not be too long ahead in time. However, our biggest concern is that the WP neglects the national circumstances, putting its focus on the interests of incumbents across Europe, failing to acknowledge that in Germany, the biggest market in Europe (based on population), the market dynamics still revolve around the incumbent and its behaviour. In this context, we emphasize that only the sustained proactive investment of the alternative operators forced the Deutsche Telekom to start investing itself and the investments and number of connections rolled out of the alternative operators continuously exceed these of the incumbent⁴⁷. We, therefore, urge the Commission to take full account of the means necessary to avoid transition of SMP from copper onto fibre networks throughout the copper switch-off and underline that, in the German case, it would only be possible based on a strict regulatory scrutiny linked to the SMP of the incumbent. Currently, **under the EECC only the incumbent has the right to initiate the switch-off proceedings.** Therefore, **NRAs should be invited to evaluate a concrete migration concept in collaboration with all market players** before the incumbent initiates these proceedings.

2.4 Access policy in a full fibre environment

In the chapter *Access policy in full fibre environment* the WP focuses on the evolution of access policy in the context of the transition to full fibre networks across Europe. As fibre networks replace legacy copper infrastructures, the regulatory framework should adapt to these technological advancements to ensure efficient and fair access policies. The chapter outlines as key aspects of this transition (1) the acceleration of the copper switch-off by setting an end date for a full transition into a complete fibre environment; (2) the establishing of new access policies by conducting a revision of the access regulation to reflect the new fibre environment, including a European wholesale access product, and considering the elimination of ex-ante regulation for certain markets, or, going even further, ruling out all other access regulation with the exception of markets for civil infrastructure based on a minimalistic regulatory approach (e.g., no price regulation or pricing flexibility); (3) ensuring competitive market dynamics with a focus on promoting investments in VHCN and addressing the specific challenges in the different MS with a focus on varied duct network infrastructures and removing administrative hurdles; (4) the application of a non-discriminatory approach providing equal opportunities for all market players.

As VATM repeatedly emphasized in the previous points, the objectives and fundamental principles enshrined in the EECC remain the cornerstones that determine developments in the telecommunications market. These must be maintained as overriding principles, as only together can they provide sufficient safeguards for the market as a whole and for the users.

⁴⁷ DIALOG CONSULT / VATM (2023): 25. *TK-Marktanalyse Deutschland 2023: Ergebnisse einer Befragung der Mitgliedsunternehmen im Verband der Anbieter von Telekommunikations- und Mehrwertdiensten e. V. im dritten Quartal 2023*, P.19 ([Marktstudie-2023-V6.pdf \(vatm.de\)](#), last accessed 17.06.2024).

However, **VATM supports the view that competition must become a much more central component of these principles.** By emphasizing competition, the further development of the market is promoted as only competitive markets are able to constantly improve network and service quality, adjust prices in line with market developments and satisfy the needs of end users. In this context, **we see the vision proposed by the WP for the future regulatory development as dissatisfactory.**

VATM maintains that competition, under the current market conditions, can be sustained only by a strong regulatory framework based on the SMP regime. We remind the Commission that in Germany, we already have the experience of prematurely betting on a minimalistic regulatory approach introduced by the BNetzA in 2021⁴⁸, directly followed in the past three years by clear expansion of the customer base of the incumbent on the regulated infrastructure⁴⁹, as it allowed for persistent predatory pricing, and a wave of strategically targeted announcements and activities of overbuild⁵⁰ aiming at crowding out investments. Therefore, we strongly underline that ex-ante regulation based on SMP and its consistent enforcement remain the core fundament of competition as it ensures stability, foreseeability, and protection against malicious behaviour, strongly signalling favourable investing climate.

Adjacent to the regulatory framework are also the Commission's Recommendations related to the application and enforcement of remedies by the national NRAs. As essential part ensuring the stability of the framework, they, including the Markets Recommendation the abolition of which is targeted in *Scenario 5b*⁵¹, remain a key instrument for maintaining competition that must be retained. **VATM does not see any indication that such approach is necessary or, in fact, meaningful.**

Furthermore, based on our previous experience from the reduction of the markets listed in the Markets Recommendations, we observe a steady increase in the court proceedings of our members - B2B operators, looking to establish a case-law-based legal certainty.⁵² This comes to show that markets, which have been previously listed in the Markets recommendation, are not a subject of a proactive market analysis by the NRAs, although there are various indications of competition bottlenecks. Thus, VATM urges the Commission to sustain the remaining Market 1 and Market 2 in the Markets Recommendation as once removed, it is highly unlikely to secure a regulatory safety for the market players operating on them.

⁴⁸ BUNDESNETZAGENTUR (11.10.2021): *Bundesnetzagentur legt Entwurf zur künftigen Zugangsregulierung vor.* (www.bundesnetzagentur.de) ([Bundesnetzagentur - Presse - Bundesnetzagentur legt Entwurf zur künftigen Zugangsregulierung vor](#), last accessed 17.06.2024).

⁴⁹ DIALOG CONSULT / VATM (2023): 25. *TK-Marktanalyse Deutschland 2023: Ergebnisse einer Befragung der Mitgliedsunternehmen im Verband der Anbieter von Telekommunikations- und Mehrwertdiensten e. V. im dritten Quartal 2023*, P.19 ([Marktstudie-2023-V6.pdf \(vatm.de\)](#), last accessed 17.06.2024).

⁵⁰ HANDELSBLATT (17.03.2023): *TELEKOMMUNIKATION: Deutschlands Glasfasermarkt läuft heiß.* (handelsblatt.com) (<https://www.handelsblatt.com/technik/it-internet/telekommunikation-deutschlands-glasfasermarkt-laeuft-heiss/29000526.html>, last accessed 17.06.2024).

⁵¹ EUROPEAN COMMISSION (2024): *White Paper: How to master Europe's infrastructure needs?*, P. 36.

⁵² VATM participates as an Intervener in the court cases, contributing to the preparation of our member companies and regularly reporting on the outcomes of these court proceedings.

In order to safeguard competition a common basis and formalized conditions must be maintained, so an evaluation of the market conditions by the NRAs is possible on the basis of common criteria. Turning away from this core instrument would not only lead to further uncertainty, thus, be an obstacle to the necessary investments but would also run counter to the establishing of a Single market, as there would no longer be a common basis for evaluation and markets could be determined arbitrarily or left completely to the remonopolization activities of the incumbents. This would make collaboration and knowledge sharing between the NRAs more difficult and imply an increased need for resources.

Neither of these can be the aim of a lean, effective and forward-looking regulatory framework and would not be suitable for achieving a strong European Single market.

Taking these considerations into account, we call on the Commission to reconsider its overall approach towards the proposed reform of the regulatory framework and conduct a full-fledged evaluation of the state of the regulatory landscape in Europe – on a country-by-country basis, which would allow for gathering the necessary information on what has worked so far and under what conditions. Only by resolving to such **benchmark-like evaluation method** providing for practically and empirically backed comparison of regulatory approaches across the EU would deliver an informed overview of good practices and lessons learned, which not only would inform the market players, the Commission, and the MS authorities, but would also aid the creation of a true Internal market.

2.5 Universal service and affordability of digital infrastructure

In the chapter *Universal service and affordability of digital infrastructure* the WP puts an emphasis on the importance of ensuring that all citizens have access to essential digital services, regardless of their geographic location or socio-economic status. In this context, the WP discusses closely the role of measures such as Universal Service Obligations (USO), affordability features directly linked to ensuring the accessibility of digital services for everyone, as well as the anchoring of the principle of technological neutrality. In addition, the WP points out that universal service should not only focus on basic connectivity but also aim to provide high-speed internet access that meets the growing demands of users ensuring that all citizens can participate in the digital economy and society. In order for all this to happen, the WP addresses also the reduction of bureaucracy as simplifying administrative processes can help expedite the rollout of digital infrastructure and services to underserved areas.

Putting the topic under discussion in this manner shows that the Commission considers an expansion of the obligations of the operators with regard to the definition of USO. VATM contests whether such measure would be appropriate given the fact that the EECC already foresees that it is in the competency of the NRA to define the scope of the necessary intervention, and this might vary from one MS to another as it is closely

linked to the concrete state of market development. **We maintain that the USO must remain in its current form, as mandated in the EECC**, as changing it would lead to more bureaucracy instead of improvements.

However, we support the view expressed in the WP that measures related to USO, to the extent they are truly necessary, should ensure that **minimum coverage is not only a responsibility of the market**. For this, we urge a better implementation of the EECC measures on a national level which emphasize funding USO based on state budgets instead of entirely relying on industry contributions.

2.6 Sustainability

in the chapter dedicated to *Sustainability* the WP discusses the sustainability challenges in the context of Europe's connectivity infrastructure and calls for concerted efforts to enhance energy efficiency, resource management, regulatory support, stakeholder collaboration, and innovation to build a more sustainable digital future. In this context, the WP raises the point towards establishing a robust regulatory framework that incentivizes sustainable practices within the telecommunications industry. This includes policies that encourage investment in green technologies and the development of standards for sustainability reflecting on the measures that should be introduced in order to achieve more resource efficient and environmentally friendly operations. The WP also emphasizes the role of the stakeholder collaboration to address sustainability challenges effectively in order to develop and implement sustainable solutions.

By highlighting “*a more efficient use of networks (codecs) throughout the Union*”⁵³ in Scenario 7⁵⁴ the WP underlines the importance of sustainability for the future operation of telecommunications infrastructure. This is especially relevant in the context of sustainable finance and making the networks more attractive for this type of targeted investments, which gradually gain on importance for the future.

In this context, **VATM supports the WP's view that telecommunications networks should be included in the EU taxonomy**. We therefore call for an EU-wide synchronized approach, when it comes to reporting and documenting the activities influencing the sustainability score of a certain operator. Building on that, we welcome the WP's view that this should be achieved based on the collaborative efforts of the industry. In the current circumstances, **it is essential that this process is facilitated quickly in order to accelerate the positive impact of additional funding opportunities towards the deployment of fibre infrastructure and achieving the Digital Decade goals**.

⁵³ *ibid.* P.37.

⁵⁴ *ibid.*

3. Views and consideration on Pillar I and Pillar III

The points raised in Pillar I and II of the WP are directly referring to industrial policy exploring the actions that could be taken on a policy level *“that aim to incentivise building the digital networks of the future, master the transition to new technologies and business models”*⁵⁵, which are convergent in its nature, while underpin the *“competitiveness of our economy and ensure secure and resilient infrastructures and the Union’s economic security”*⁵⁶

Pillar I emphasizes the need to establish a robust digital infrastructure capable of supporting a wide range of advanced applications and services that rely on high-performing connectivity and computing resources. This so called "3C Network" would be integrating advanced connectivity and computing resources into a cohesive ecosystem. This would involve enhancing on-device edge technology with AI processors and combining it with edge and cloud services to optimize security and sustainability. Collaboration across the value chain, including chip manufacturers and cloud service providers, is essential part of the vision expressed in the WP, aiming to ensure that technological innovations are implemented within the EU, fostering a community of European innovators, and enhancing the region’s economic security and prosperity.

Pillar III focuses on ensuring the security and resilience of Europe’s digital infrastructures. The WP points at the increasing reliance on digital infrastructure for critical applications underlining the necessity for robust security measures and resilience planning.

Key actions the WP discusses as part of this chapter involve improving preparedness and response to threats, securing critical infrastructures like submarine cables, and boosting investments in security. The WP foresees a comprehensive EU-wide risk assessment, better governance of cable technologies, and coordination with international partners such as NATO. It clearly sets the goal to strengthen Europe’s digital sovereignty by reducing dependency on external suppliers and ensuring that critical infrastructures are secure and resilient against potential threats. This involves both immediate measures to protect existing infrastructures and long-term strategies to build more resilient and secure systems for the future.

VATM acknowledges the intention of the Commission to create close links between different industries and players. We welcome the exploratory approach it introduces regarding the creation of pilot projects for the “3C Network”. However, we would like to emphasize that building networks, even on a smaller scale, is an expensive venture requiring robust investments. In this context, we invite the Commission to carefully consider what state aid funding scheme would put forward to enable the most efficient collaboration between the different industry players and operators, so all funds would flow into building networks to be made available for the EU citizens and the business.

⁵⁵ *ibid* P.5.

⁵⁶ *ibid*.

As referring to Pillar III and the security concerns raised in the WP, VATM agrees that building secure and resilient networks should be a priority based on the technical competence to control it. At least risks for the resilience of networks might have different background in technology and economy, and security standards need to address all risks, that might occur in the European supply chain. We understand the views and considerations the Commission puts forward in this context. However, we maintain that a component and origin technology neutral approach should be taken for the reasons the WP brings up repeatedly – it would enhance our ability to innovate, which is a direct contribution to our European competitiveness and economic security. We remind the Commission that the most groundbreaking and widely applicable digital technologies and solutions in the past decades do not originate from the European continent. Facing the reality that the bulk of scientific research in the roots of various new technologies, which would emerge in the next years, is conducted elsewhere and the grim perspective of the aging population in Europe combined with declining education systems, we urge the Commission to refrain from resolving into technological isolationism.