Access to mobile networks (Art. 61a EECC/DNA)

Access to active mobile infrastructure for service providers without their own mobile networks represents a logical further development of existing EU legal principles. It is based on:

- the principle of **technology neutrality** (Art. 3(4)(c) EECC),
- the **requirement of non-discrimination** (Art. 4(3)(b) and (d) EECC),
- and the objective of promoting innovation, diversity and quality in the provision of electronic communications services through **effective competition** (Art. 4(3)(f) EECC).

Background and objective

The increasing **technological convergence** between fixed-line and mobile communications – in particular through the end-to-end IP-based provision of voice, data and messaging services – also necessitates structural opening in the mobile communications sector. Network operators have long been operating integrated, cross-platform infrastructures. Access is either wired or mobile in physical terms, but this reality has not yet been fully reflected in the regulatory framework.

While access obligations for passive and active infrastructures already exist in the fixed-line sector, there is no corresponding instrument in the mobile communications sector. This gap leads to objectively unjustified unequal treatment and contradicts the principle of technology neutrality.

Regulatory classification

The proposal contributes to the **harmonisation of access regulation** across network types and supports the Union's internal market objectives, particularly with regard to cross-border services and interoperability. At the same time, it protects the **economic interests of network operators** by clearly defining the grounds for refusal. An obligation to grant access only arises if legal and technical availability exists and if there are no grounds for refusal that warrant protection (e.g. national security).

The regulation is a further development of existing Union instruments such as Article 61(2) of the EECC and Article 3 of the GIA. It also follows the recommendation of the **Draghi Report** to selectively replace ex ante obligations with ex post instruments, provided that these are suitable for enabling competitive service offerings in consolidated markets.

Consistency with the Gigabit Infrastructure Act

For reasons of **regulatory consistency**, the proposal is based on the structure and terminology of Article 3 of Regulation (EU) 2024/1309 (Gigabit Infrastructure Act). Terms such as '*reasonable request', 'virtual access'* and graduated grounds for refusal have been adopted and adapted to the context of active mobile networks. This facilitates integration into the existing legal framework and increases certainty of application for operators and regulatory authorities.

Price regulation and protection of sensitive data

Pricing follows a **bottom-up logic** to determine fair and reasonable fees, supplemented by a **top-down cap** to ensure competitive end-customer prices.

Operators who provide their services exclusively or predominantly on the basis of virtual access (MVNO) are exempt from the access obligation.

In contrast to the GIA, there are **no general publication requirements** in order to take into account the increased need for protection of sensitive technical and commercial information in active network operation.

Specific regulatory proposal: Access to mobile networks (Art. 61a EECC/DNA)

(1) Mobile network operators shall grant all reasonable requests made in writing by a provider of public electronic communications services for access to the relevant mobile networks for the purpose of offering services to end users or other providers of public electronic communications services on non-discriminatory, fair and reasonable terms, including price. Such written requests shall specify the precise nature of the access sought. Member States may lay down detailed requirements regarding the administrative aspects of the requests.

(2) When determining fair and reasonable conditions, including prices, for granting access and to avoid excessive prices, mobile network operators shall, where appropriate, take into account at least the following:

(a) existing contracts and agreed commercial terms between providers of public electronic communications services requesting access and mobile network operators granting access to mobile networks;

(b) the need to ensure that the access provider has a fair opportunity to recover the costs demonstrably incurred by granting access to its mobile networks, taking into account specific national conditions, business models and any tariff structures that have been put in place to provide a fair opportunity to recover costs; in the case of electronic communications networks, any remedies imposed by a national regulatory authority shall also be taken into account;

c) any additional maintenance and adaptation costs resulting from the granting of access to the mobile network concerned;

d) the consequences of the requested access for the access provider's business plan, including investments in the mobile network to which access is requested;

e) in the case of access to mobile networks of operators, any relevant guidance in accordance with paragraph 8, in particular:

i) the economic viability of such investments, based on their risk profile,

ii) the need for a reasonable return and any timetable for such a return;

iii) any impact of access on downstream competition and, consequently, on prices and returns,

iv) any depreciation of network assets at the time of the access request,

v) any economic analyses on which the investment was based at the time it was made, in particular for investments in the physical infrastructure used for network connection, and

vi) any opportunities previously offered to the access seeker for joint investment in the roll-out of mobile networks, in particular in accordance with Article 76 of Directive (EU) 2018/1972, or for parallel joint roll-out;

f) when taking into account the need for a reasonable return for operators in line with market conditions, their different business models, in particular in the case of undertakings that primarily provide associated facilities and offer access to the relevant mobile networks to more than one provider of public electronic communications networks;

g) the need to ensure that the access seeker also has a fair chance in competition to cover the costs demonstrably incurred in reselling the access, to generate a reasonable return and to be able to offer competitive retail products and services.

(3) Mobile network operators may refuse access to the mobile networks concerned on one or more of the following grounds:

a) the existence of justified reasons relating to security, national security and public health;

b) the existence of sufficiently justified reasons relating to the integrity and security of existing networks, in particular national critical infrastructures;

d) if the mobile network operator provides mobile telecommunications services in the Member State concerned exclusively or predominantly on the basis of virtual access to a mobile network;

e) in the case of a request for access to physical infrastructure, the availability of viable alternatives for access to mobile networks at the wholesale level that are more suitable for the provision of services to end users or other providers of public electronic communications services, which are offered by the same mobile network operator on fair and reasonable terms or, in the specific case of rural or remote areas where a network is operated exclusively at wholesale level and is owned or controlled by public authorities, which are provided by the operator of that network.

(4) In the event of a refusal of access pursuant to paragraph 3, the mobile network operator shall, at the latest one month after the date of receipt of the complete request for access, provide the requesting party with specific and detailed reasons for the refusal in writing, except in the case of national critical infrastructures as defined in national law, for which no specific and detailed reasons need to be given to the access seeker in the notification of refusal.

(5) Member States may establish or designate a body to coordinate requests for access to mobile networks owned or controlled by public authorities and to provide legal and technical advice on the negotiation of access conditions.

(6) Mobile networks that are already subject to access obligations imposed by national regulatory authorities in accordance with Article 73 or resulting from the application of Union rules on State aid shall not be subject to the obligations set out in paragraphs 1 to 3, insofar as such access obligations exist.

(7) This Article shall not affect the property rights of the owner of the mobile network, where the mobile network operator is not the owner, or the property rights of third parties, such as land and building owners, or, where applicable, the rights of tenants.

(8) After consulting stakeholders, national dispute resolution bodies or other competent Union bodies or agencies in the relevant economic sectors, and taking into account established principles and the different circumstances in Member States, the Commission may, in close cooperation with BEREC, provide guidance on the application of this Article.