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# BEREC Guidelines Art 61(3) Symmetrische Verpflichtungen

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1. März 2017 - Im Menü Einfügen – Kopf- und Fußzeile den gewünschten Text einfügen



## Was steht in Art 61(3)?

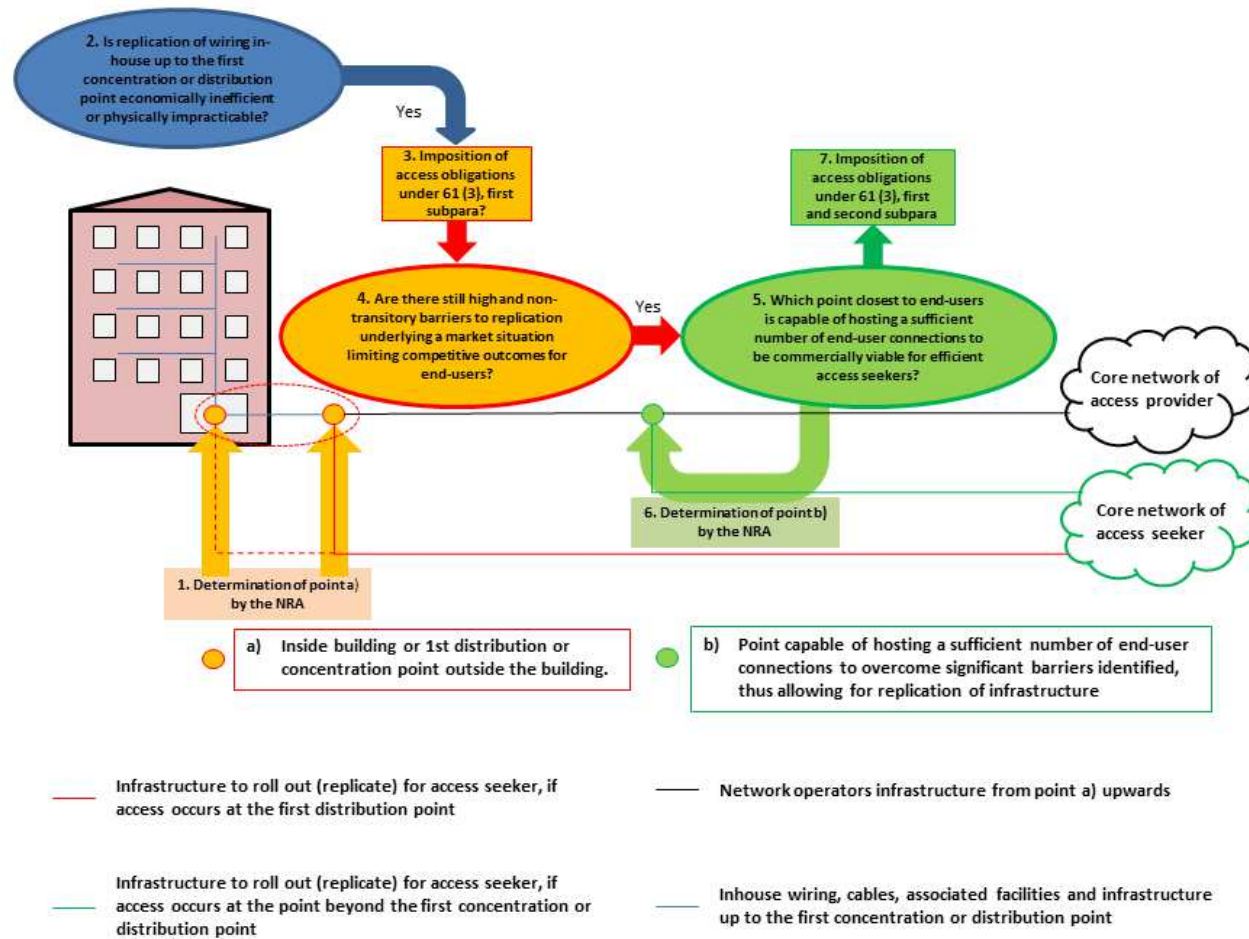
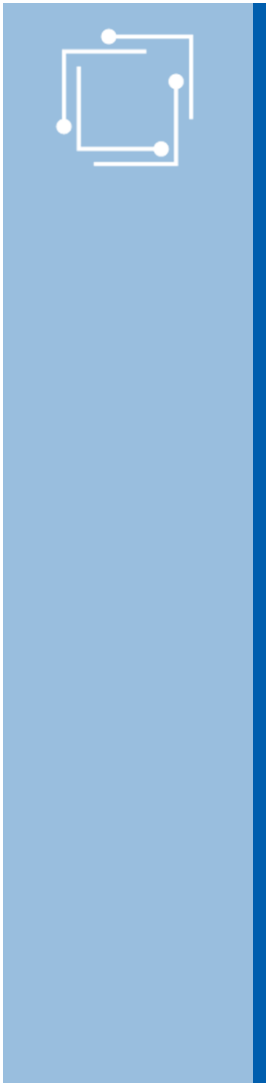
- 1<sup>st</sup> subpara: NRAs “[...] may impose obligations, upon reasonable request, to grant access to wiring and cables and associated facilities inside buildings or up to the **first concentration or distribution point** [...]. Where [...] replication of such network elements would be economically inefficient or physically impracticable [...] obligations may be imposed on [...]” all owners of such infrastructure.
  - Recital 152: Obligations “[...] should be imposed only where justified and proportionate to achieving sustainable competition in the relevant markets”
- 2<sup>nd</sup> subpara: “Where [...] obligations imposed in accordance with the first subparagraph do not sufficiently address high and non-transitory economic or physical barriers to replication [...] significantly limiting competitive outcomes for end-users, it may extend the imposition of such access obligations, [...] **beyond the first concentration or distribution point**, to a point that it determines to be the closest to end-users, capable of hosting a sufficient number of end-user connections to be commercially viable for efficient access seekers.” NRAs “may impose active or virtual access obligations.”
  - Exceptions: (a) wholesale only or access available, (b) access would compromise financial viability of a new network deployment, in particular by small local projects.

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## Inhalt der BEREC Guidelines

- By 21 December 2020, BEREC shall publish guidelines to foster a consistent application of this paragraph, by setting out the relevant criteria for determining:
  - (a) the first concentration or distribution point;
  - (b) the point, beyond the first concentration or distribution point, capable of hosting a sufficient number of end-user connections to enable an efficient undertaking to overcome the significant replicability barriers identified;
  - (c) which network deployments can be considered to be new;
  - (d) which projects can be considered to be small; and
  - (e) which economic or physical barriers to replication are high and non-transitory.



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## (a) the first concentration or distribution point

- The first concentration or distribution point is the point situated closest to the end-user, pursuant to Art. 61 (3) subparagraph 1 EECC that
  - is accessible or can be made accessible without unreasonable effort by the ECN provider or network owner, which in particular
    - entails a dedicated facility for concentration or distribution of network cables, e.g. a dedicated space in the basement of a building or a street cabinet, that can be accessed by the access seeker on a regular basis,
    - entails network infrastructure that can be unbundled without unreasonable effort by the access seeker, e.g. because there is a detachable connection, and
  - is the first accessible concentration or distribution point located inside a building or the first subsequent accessible concentration or distribution point located outside a building.



## (e) which economic or physical barriers to replication are high and non-transitory.

- High and non-transitory economic or physical barriers to replication [...] entail obstacles which create a level of risk that deters efficient network operators from replicating a network, or part of a network, and which are unlikely to disappear or significantly diminish in the short term. In particular, high and non-transitory barriers
  - include significant costs, especially sunk costs associated with civil infrastructure works, for network replication,
  - are present if the prospect of cost recovery is low because an efficient access seeker is not able to achieve sufficient economies of scale,
  - include technical, legal or administrative requirements and restrictions that hinder network replication, as well as the impossibility to gain physical access to buildings or soil.



## (b) the point beyond the first concentration or distribution point

- The point beyond the first concentration or distribution point [...] is the first subsequent access point:
  - i. that is located closest to the end-user, whilst providing for a commercially viable business case for an efficient access seeker, effectively allowing the access seeker to attain sufficient revenues that at least equal the expected incremental costs, including capital costs, for network deployment,
  - ii. that is accessible, as described in paragraphs 31-36, for the purpose of imposing access to physical network infrastructure, or allows for network hand-over and if necessary the possibility for collocation, for the purpose of imposing active or virtual access, where this would be justified on technical or economic grounds,
  - iii. that, if access is granted, would allow an efficient access seeker to overcome the high and non-transitory economic or physical barriers identified by the NRA.
- If the NRA determines it appropriate to segment the network into different clusters, the access points beyond the first concentration or distribution point may differ between those clusters, in order to meet the criteria set out in points i-iii above.





## (c) which network deployments can be considered to be new

- Network deployments to be considered new [...]
  - are limited to networks that were recently deployed, meaning that service provision to customers started no longer than five years ago, and
  - normally does not include upgrades of existing networks, unless the investments in physical infrastructure, e.g. new ducts and wiring – such as fibre lines – are significant and if the take-up or market share of the network is expected to be limited, thus requiring a first mover advantage.
- [But: “Generally, access obligations [...] have to be imposed on fair and reasonable terms and conditions. [...] Therefore access obligations under Art. 61 (3) EEC normally should preserve investment incentives.”, see Guidelines para 87. ]



## (d) which projects can be considered to be small

- **Projects to be considered small [...]**
  - should only include projects carried out by undertakings which are not active in the whole or a major part of the broadband market, e.g. projects undertaken by small municipal networks, co-operative end-user built networks or networks rolled out by new entrants in the market,
  - should only include projects carried out by undertakings of a limited size on the broadband market, whereas the size of the undertaking in question should be measured relative to the total turnover and/or total number of active or passive connections on the broadband market,
  - as a presumption include projects carried out by undertakings which have less than 500 potential end-users connected to their network.



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**Auf Wiedersehen!**

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