

Wholesale roaming regulation

A precondition for 'roam like at home'

OVERVIEW

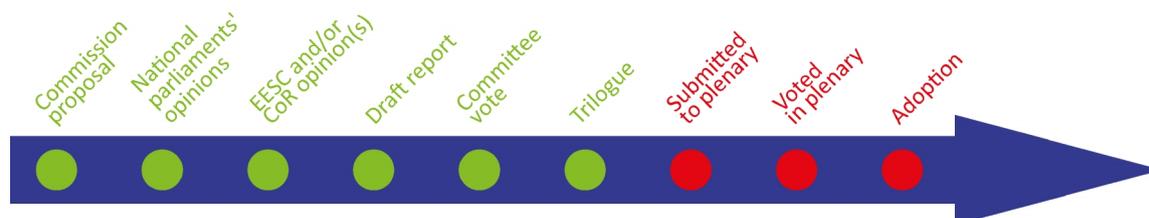
In 2015 the Council and European Parliament agreed in Regulation 2015/2120 that on 15 June 2017 roaming charges for mobile phone use would be abolished in the EU. After that date, 'roam like at home' (RLAH) would become a reality for all Europeans.

The regulation did not, however, address the wholesale roaming market, on account of the need to investigate market conditions in more depth. A review for the European Commission concluded that national wholesale roaming markets are not working well and need regulatory intervention. It therefore proposed a regulation establishing the maximum level of wholesale roaming charges that telecoms operators can charge each other for calls, text messages and data, to take effect from 15 June 2017.

On 29 November, Parliament's Industry Committee voted for a significant reduction in the data wholesale caps proposed by the Commission. During the third trilogue meeting on 31 January, an agreement was reached between the Parliament and the Council that lowers significantly the wholesale data caps originally proposed.

Proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 531/2012 as regards rules for wholesale roaming markets

<i>Committee responsible:</i>	Industry, Research and Energy	COM(2016) 399
<i>Rapporteur:</i>	Miapetra Kumpula-Natri, S&D, Finland	15.6.2016
<i>Shadow rapporteurs:</i>	Paul Rübzig, EPP, Austria Evžen Tošenovský, ECR, Czech Republic Jens Rohde, ALDE, Denmark João Ferreira, GUE/NGL, Portugal Michel Reimon, Greens/EFA, Austria David Borrell, EFDD, Italy Lorenzo Fontana, ENF, Italy	2016/0185(COD) Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	First-reading vote in plenary	



Introduction

Since 2006, the European Commission has been taking action to address the high roaming charges paid by consumers for using their mobile phones when travelling abroad in another EU Member State. Regulatory measures adopted by the co-legislators in [2007](#), [2009](#) and [2012](#) introduced binding maximum retail and wholesale roaming surcharges.

Since the first roaming regulation was introduced in 2007, roaming prices have decreased dramatically: [by more than 90 %](#) for calls, text messages (SMS) and data. [Benchmarking data](#) from the Body of European Regulators for Electronic Communications (BEREC) for the 2007-2015 period show that the evolution of both retail and wholesale prices was very closely aligned to the retail and wholesale price caps set by the various EU roaming regulations.

In 2015, the European Parliament and the Council adopted the [fourth roaming regulation \(No 2015/2120\)](#), which entered into force on 29 November 2015. Among other things, this regulation amends the previous roaming regulation (No 531/2012) to introduce the abolition of retail roaming charges in the EU from 15 June 2017. After that date, there should be no more roaming charges and instead consumers should be able to 'roam like at home' (RLAH) across the EU. However, the regulation did not provide for measures on the wholesale roaming market, because additional investigation of market conditions was necessary. Article 19 of Regulation 2015/2120 states that the European Commission should initiate a review of the wholesale roaming markets by 29 November 2015 to establish whether specific measures are needed for a complete abolition of retail roaming surcharges from 15 June 2017 and make a proposal by 15 June 2016.

Context

The mobile communications market remains [fragmented](#) in the EU, with no mobile network covering all Member States. In order to provide their customers with mobile services when travelling within the EU, roaming providers have to purchase wholesale roaming services from, or exchange wholesale roaming services with, operators in the Member State visited. For the abolition of retail roaming charges to be sustainable throughout the EU, national wholesale roaming markets need to be competitive and to enable operators to offer retail roaming services without any charges in addition to the domestic price. Wholesale prices are those which operators charge each other for using their network.

Existing situation

On 30 April 2016, new rules on roaming entered into force, under Regulation 2015/2120, that further decreased the previous roaming retail surcharges: when travelling in the EU, mobile device users now pay a smaller amount on top of their domestic prices (i.e. the wholesale caps established in Regulation 531/2012): up to €0.05 per minute of call made, €0.02 per text message sent, and €50 per gigabyte (GB) of data (excluding VAT). These retail surcharges should only apply for a short transition period until 15 June 2017. From then on, operators will not be able to recover their wholesale roaming costs directly, as they will not be allowed to charge them to customers roaming in the EU. This might put some domestic charging models at risk. If wholesale charges are set too high, smaller operators (with lower negotiating power than large operators) might be forced to increase domestic prices to recover the costs of providing roaming retail and wholesale services. This price-increase phenomenon is known as a 'waterbed effect'. On the other hand, operators in countries with a lot of incoming roaming traffic might incur higher

costs from having to increase the capacity in their networks to allow for the additional roaming traffic and might also be forced to increase domestic prices to recover the costs of providing roaming services. (i.e. a second 'waterbed effect').

The Commission review (see section below) concluded that the markets are not sustainable as operators charge each other too much. The current wholesale caps are too high to enable the sustainable introduction of RLAH, and thus need to be further reduced. Otherwise, if these wholesale charges remained, the Commission estimates that the domestic charging model of at least 20 % of operators and/or in at least six Member States would be undermined by RLAH in 2017, which is contrary to enabling RLAH.

Parliament's starting position

In its [resolution](#) of 12 September 2013 on the digital agenda for growth, mobility and employment: time to move up a gear, the Parliament stressed that abolishing roaming charges was crucial to facilitating an internal digital market in which competition was encouraged and there was no differentiation between national and roaming tariffs. Ultimately, it called for the gap between national and roaming tariffs to be removed by 2015. However as a number of steps still needed to be taken in order to make the end of roaming charges sustainable throughout the EU (including the wholesale market review), the end date could not be set earlier, as preferred by Parliament. Furthermore in January 2016, the European Parliament voted in its [resolution](#), Towards a digital single market act 2015/2147 (INI), for a timely wholesale review, to deliver the end of roaming charges for all European consumers by 15 June 2017.

Council & European Council starting position

At the Transport, Telecommunications and Energy Council meeting of 11 and 12 June 2015, EU ministers [discussed](#) the Commission's digital single market strategy. They supported the abolition of roaming charges. However, they [emphasised](#) the need to avoid creating a situation in which the new rules would oblige roaming operators to operate at a loss, as this would likely lead to higher domestic prices.

Similarly, the European Council asked, in its [conclusions](#) of 28 June 2016, for a swift review of the wholesale roaming market with a view to the abolition of roaming surcharges by June 2017.

Preparation of the proposal

Article 19 of Roaming Regulation 2015/2120 entrusted the European Commission with the task of reviewing the wholesale roaming markets and making appropriate proposals to enable the abolition of retail roaming surcharges by mid-June 2017.

To underpin the review, the Commission considered a related report from BEREC, commissioned a study to assess the cost of providing wholesale roaming services in the EU, and carried out a public consultation from 26 November 2015 to 18 February 2016. Following the review report, [the proposal](#) for a regulation amending Regulation (EU) No 531/2012 as regards rules for wholesale roaming markets (COM(2016) 399) and its impact assessment were published by the Commission on 15 June 2016.¹

BEREC Report on the wholesale roaming market

In 2015, the Commission and BEREC gathered data and conducted an analysis of wholesale and retail roaming markets, including an assessment of the sustainability of the RLAH provision. This [report](#) is based on data that BEREC collected in a questionnaire to national regulatory authorities (NRAs) and operators. The report finds that, on the one

hand, wholesale charges should be low enough to allow for the abolition of retail roaming surcharges, protect competition and prevent retail price increases for domestic customers at home. On the other hand, wholesale charges should be high enough to enable network operators to recover costs, for visited network operators to still receive a return on investment, to prevent retail price increases for domestic customers in the visited network and to diminish negative impacts on competition for mobile virtual network operators (MVNOs) in visited markets. The report noted that mobile network operators (MNOs) and MVNOs engage in bilateral wholesale agreements with various pricing options, though MVNOs have weaker negotiating power in comparison with larger networks.

The BEREC report concludes that the wholesale markets are not functioning properly. It details a preliminary assessment of viable scenarios with a view to the abolition of retail roaming charges in 2017. Given the trade-offs at play, BEREC notes that the task of finding a balanced solution for home and visited markets will be rather difficult and compromises will have to be made.

Assessment of the cost of providing wholesale roaming services in the EU

The EC commissioned a [study](#) from TERA Consultants in order to build a bottom-up cost model to estimate the costs of providing wholesale roaming services for a mobile network operator in 29 European Economic Area (EEA) countries (28 Member States + Norway). The model was based on models provided by some NRAs, but with some additional specifications developed by the consultants. The results were used to conduct the Commission review and impact assessment.

Public consultation (26 November 2015 to 18 February 2016)

The Commission held a 12-week public [consultation](#) to get stakeholder's input on the review of national wholesale roaming markets and also on the fair use policy and the sustainability mechanism referred to in Roaming Regulation 531/2012 as amended by Regulation 2015/2120.

The consultation analysis report showed that stakeholders are divided. In the case of operators, 28 % of respondents (representing incumbent, larger operators and operators with more inbound than outbound roaming) said that the wholesale roaming market is competitive and can deliver RLAH. By contrast, 53 % of respondents (representing smaller operators, MVNOs and operators with more outbound than inbound roaming) said that the wholesale roaming market is not competitive and cannot deliver RLAH. The analysis highlighted the fact that the proportion of operators that do not know (18 %) is significant, while only one operator thinks that it depends on the Member State.

On the question of the various policy options, the option preferred by 73 % of respondents was an EU-wide wholesale roaming cap. While the majority supported this measure, operators were divided as to what would be the most appropriate level. Furthermore, 58 % of the responding operators supported the option of reducing wholesale roaming caps.

Commission report on the review of the wholesale roaming market (COM(2016) 398) and its accompanying staff working document (SWD(2016) 200)

This comprehensive [report](#) presents the results of the Commission's wholesale roaming review, as requested by Article 19 of the Roaming Regulation 2015/2120. The report details the underlying reasoning for the legislative proposal and the associated impact

assessment. The detailed methodology and results of the analysis of the functioning of wholesale roaming markets are included in its accompanying staff working [document](#).

The review assessed three main aspects: developments in competition in the retail roaming markets, the costs of providing wholesale roaming services in the EU and the degree of competition in national wholesale markets. It showed that wholesale roaming prices are appreciably above costs, including joint and common costs; it identified four market failures;² and it looked into the expected impacts that the RLAH obligation would have on the functioning of wholesale roaming markets.

Impact assessment

The impact assessment (IA) [report](#) is based on the data and analysis that fed the review. The methodology for the assessment is set out in its Annex 4. It considered four policy options: no action at Union level; EU-wide wholesale roaming caps set at the current level; EU-wide wholesale roaming cap set at a lower level than currently; and country-specific wholesale roaming caps.

The IA analysis showed that Option 3 was the preferred option to enable RLAH. Otherwise the Commission concludes that the obligation laid down in Article 6(a) of Roaming Regulation 2015/2120 to abolish retail roaming surcharges from 15 June 2017 would not be applicable at that date. The EU would therefore fail to deliver on the political promise to end retail roaming surcharges in the EU by June 2017.

According to the [EPRS initial appraisal](#) 'the body of research presented appears to be solid and comprehensive although it is not always clear which findings were used in the elaboration of which options. Furthermore, the technical language of the IA makes it difficult to understand the reasoning and evidence behind the analysis'.

The Commission's Regulatory Scrutiny Board delivered a [positive opinion](#) on the draft IA on 15 April 2016, but made several important recommendations for improvement regarding better explanation of the problem, the definition of the baseline scenario, clarification of the policy options – in particular the sustainability and feasibility of the options – and also the comparison of the options. According to the EPRS initial appraisal, 'some of these recommendations appear to have been taken into account in the final IA, although the problem could still have been defined more clearly and better linked to the complexities of the policy context'.

The changes the proposal would bring

The draft regulation establishes the level of wholesale roaming charges that operators will charge each other for using their network from 15 June 2017, for calls, text messages (SMS) and data. In effect the Commission proposes to reduce current wholesale roaming charges caps to €0.04 per minute of call made, €0.01 per SMS and €8.5 per GB of data transmitted. This is a reduction compared with the previous caps of -20 %, -50 % and -83 % respectively. The Commission proposes the caps remain unchanged from 15 June 2017 until 30 June 2022 (with a review in 2019). It also adds the possibility for operators to conclude a wholesale agreement to opt out of applying these wholesale caps and negotiate better deals.

The proposal asks for the consultation of BEREC in disputes concerning inputs necessary for the provision of regulated wholesale roaming services.

The draft regulation requires the Commission to submit a report to the European Parliament and the Council every two years after 15 June 2017 to assess the adequacy of the wholesale cap levels.

Finally, it also clarifies the data-gathering powers of BEREC, which will collect data regularly from the NRAs on developments in retail and wholesale charges for regulated voice, SMS and data roaming services.

Advisory committees

The European Economic and Social Committee (EESC) in its [opinion](#) welcomes the proposal, and finds the Commission's proposed wholesale caps reasonable. However, it is concerned about the new possibility to opt out of the regulated caps in favour of an unregulated price level, as this might lead to 'abuses of dominant positions by large operators and by those with access to a network that has national coverage, to the detriment of small operators and virtual mobile network operators'.

The Committee of the Regions has not submitted any opinion to date.

National parliaments

The subsidiarity [deadline](#) for the submission of reasoned opinions was 19 September 2016. The Romanian Senate submitted an [opinion](#) strongly recommending a substantial reduction in wholesale roaming charges for voice calls and SMS and help for small operators with no pan-European representation find an alternative way to charge on the wholesale roaming market, possibly setting non-discrimination requirements.

Stakeholders' views

This section aims to give a sense of the debate on the issues surrounding the legislative file and cannot provide an exhaustive account of all the different views expressed. For an institutional perspective on stakeholder participation, see the section on advisory committees. Additional information can also be found in related briefings listed under EP supporting analysis below.

The stakeholder reactions are divided: while [consumers](#) and small operators,³ and operators in Nordic countries (where unlimited mobile data offers are common) want lower wholesale data caps, others, including mainly large operators, want to make sure that the caps are high enough to recover all wholesale costs.⁴

The association of independent Mobile Virtual Network Operators [MNVO Europe](#) fears a lack of coherence between the regulatory obligations at retail level and the underlying economics for operators at the wholesale level. It wants to protect alternative operators offering the most competitive deals from 'margin squeeze' situations and asks for the wholesale market data caps to be further reduced.

Other operators, including mainly [large operators](#),⁵ want to make sure that the caps are high enough to recover all costs and also allow for investment in their networks. Countries with a lot of incoming traffic from tourists argue that they need to invest in capacity to allow for the additional roaming traffic on their networks. Large operators' industry associations, such as the European Telecommunications Network Operators' Association (ETNO) and GSMA, published [a joint statement](#), setting out their concerns.

Legislative process

The European Parliament committee responsible, the Committee on Industry, Research and Energy (ITRE), (rapporteur: Miapetra Kumpula-Natri, S&D, Finland), published the [draft report](#) on 16 September 2016. This was adopted by the committee on 29 November 2016. The report called for a reduction in the Commission's proposed

wholesale roaming caps for calls and especially for data, the main point of disagreement. Whereas the Commission proposed a single wholesale price cap for data (€8.5 per gigabyte⁶) for a five-year period, the Industry Committee voted for a starting wholesale data cap that is lower (€4 per gigabyte: €1 lower than the rapporteur's original proposal). This price would drop on a yearly basis (i.e. follow a glide-path), to take account of the falling unit price of data. It also recommended boosting BEREC's role in assessing unfair competition cases and preparing regular reports to monitor compliance and the market.

In the Council, a general approach was agreed on 2 December 2016: the Council [proposed](#) to start from higher data caps than those proposed by the Commission and ITRE.

Trilogue negotiations started with the Council in December 2016. During the third meeting, on 31 January 2017 [an agreement](#) was reached that lowers significantly the wholesale data caps: on 15 June 2017 the maximum wholesale charge for data will drop from the current cap of €50/GB to €7.7/GB. The data caps will then follow a glide-path:

	Commission proposal	EP position	Council position	Trilogue agreement
calls	€0.04/min	€0.03/min	€0.0353/min	€0.032/min
Text messages	€0.01/per sms	€0.01/per sms	€0.01/per sms	€0.01/per sms
Data – 15.6.2017	€8.5/GB	€4/GB	€10/GB	€7.7/GB
Data – 2018	€8.5/GB	€3/GB from 1 July	€8.5/GB on 15 June	€6.0/GB from 1 January
Data – 2019	€8.5/GB	€2/GB from 1 July	€7/GB on 15 June	€4.5/GB from 1 January
Data – 2020	€8.5/GB	€1/GB from 1 July	€6/GB on 15 June	€3.5/GB from 1 January
Data – 2021	€8.5/GB	€1/GB	€5/GB on 15 June	€3/GB from 1 January
Data – 2022	€8.5/GB	€1/GB until 30 June	€5/GB until 30 June	€2.5/GB from 1 January

Source: EPRS.

These data caps are significantly lower than those originally proposed by the Commission and the Council, but higher than the ones sought by Parliament. They are meant to allow mobile phone operators to end roaming surcharges to their customers without increasing domestic prices. They will also allow consumers to benefit from larger amounts of data when travelling, should their home provider apply the [Fair Use rules](#) which enable providers to put a limit on the amounts of data that consumers can use when travelling.

As part of the agreement, the Commission will conduct a review of the wholesale market by the end of 2019, and provide the Parliament and Council with an interim assessment by 15 December 2018, considering any initial effects of the abolition of retail roaming surcharges. The Commission will subsequently submit reports to the European Parliament and Council every two years. These should look into any negative impacts on the evolution of tariff plans available on the retail market: such as the emergence of tariff plans that only include domestic services and exclude retail roaming to consumers altogether, or any reduction in the availability of unlimited data tariff plans.

On 8 February, the agreement was approved by the Member States' ambassadors in the [Council](#). It is to be presented to the ITRE Committee for formal approval on 28 February. If endorsed then, the Parliament as a whole would vote on the regulation in plenary in April, and the Council would adopt it at the latest in May. The new rules must be in place by 15 June 2017.

EP supporting analysis

EPRS Briefing, [Roam like at home by default](#), December 2016

European Parliament, [Committee on Industry, Research and Energy, draft report on wholesale roaming markets 2016/0185\(COD\)](#), 16 September 2016.

EPRS Implementation Appraisal, [The review of wholesale roaming markets and the Roaming Regulation](#), May 2016.

Other sources

European Commission, [Assessment of the cost of providing wholesale roaming services in the EU](#), 2016.

EP Legislative Observatory, [Procedure file for the regulation on wholesale roaming, 2016/0185\(COD\)](#).

Endnotes

¹ As requested in [Regulation 2015/2120](#).

² (1) The oligopolistic nature of national wholesale markets (2) The bilateral nature of roaming agreements (3) the imperfections of wholesale roaming substitutes (4) The exclusion of MVNOs from wholesale roaming markets (see section 6.2).

³ See for instance the position of the European consumer association [BEUC](#), [Swedish operators](#) and [MNVOs Europe](#).

⁴ According to the European Commission ([see SWD/2016/0200](#)) these include network costs, roaming-specific costs and transit costs (see point 5.6).

⁵ See for instance the [positions](#) of ETNO, Deutsche Telecom, PT Portugal, Vodafone and Orange.

⁶ Note that the committee's report proposes to refer to gigabytes only rather than to megabytes.

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Second edition. The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure. To view earlier editions of this briefing, please see: [PE 595.834](#), 6 December 2016.