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*Committee on Industry, Research and Energy*

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**\*\*\*I**

## **DRAFT REPORT**

on the proposal for a regulation of the European Parliament and of the Council  
on roaming on public mobile communications networks within the Union  
(recast)  
(COM(2011)0402 – C7-0190/2011 – 2011/0187(COD))

Committee on Industry, Research and Energy

Rapporteur: Angelika Niebler

(Recast – Rule 87 of the Rules of Procedure)

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council on roaming on public mobile communications networks within the Union (recast) (COMCOM(2011)0402 – C7-0190/2011 – 2011/0187(COD))**

**(Ordinary legislative procedure – recast)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0402),
  - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union (TFEU), pursuant to which the Commission submitted the proposal to Parliament (C7-0190/2011),
  - having regard to Article 294(3) of TFEU,
  - having regard to the opinion of the European Economic and Social Committee of (...) <sup>1</sup>,
  - having regard to the opinion of the Committee of the Regions of (...) <sup>2</sup>,
  - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts <sup>3</sup>,
  - having regard to the letter of 25 November 2011 from the Committee on Legal Affairs to the Committee on Industry, Research and Energy in accordance with Rule 87(3) of its Rules of Procedure,
  - having regard to Rules 87 and 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Industry, Research and Energy and the opinion of the Committee on the Internal Market and Consumer Protection (A7-0000/2011),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance,
1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;

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<sup>1</sup> OJ C 0, 0.0.0000 p. 0./Not yet published in the Official Journal.

<sup>2</sup> OJ C 0, 0.0.0000 p. 0./Not yet published in the Official Journal.

<sup>3</sup> OJ C 77, 28.3.2002, p. 1.

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

**Amendment 1**  
**Proposal for a regulation**  
**Recital 19**

*Text proposed by the Commission*

(19) Therefore rules should be introduced to mandate the obligation to meet reasonable requests for wholesale access to public mobile communications networks for the purpose of providing roaming services. Such requests should only be refused on the basis of objective and duly substantiated criteria, which should be determined on a case by case basis by the national regulatory authorities following the dispute resolution procedure referred to in Article 17. In order to ensure a level playing field, wholesale access for the purpose of providing roaming services should be granted in accordance with the regulatory obligations laid down in this Regulation applicable at the wholesale level and should take into account the different cost elements necessary for the provision of such access. A consistent regulatory approach to the wholesale access for the provision of roaming services would avoid distortions between Member States.

*Amendment*

(19) Therefore rules should be introduced to mandate the obligation to meet reasonable requests for wholesale access to public mobile communications networks for the purpose of providing roaming services. Such requests should only be refused on the basis of objective and duly substantiated criteria, which should be determined on a case by case basis by the national regulatory authorities following the dispute resolution procedure referred to in Article 17. In order to ensure a level playing field, wholesale access for the purpose of providing roaming services should be granted in accordance with the regulatory obligations laid down in this Regulation applicable at the wholesale level and ***the relevant provisions of the Access Directive, which includes rules on non-discrimination and interoperability, and*** should take into account the different cost elements necessary for the provision of such access. A consistent regulatory approach to the wholesale access for the provision of roaming services would avoid distortions between Member States.

Or. en

*Justification*

*For reasons of consistency and legal certainty, it should be made clear that the relevant provisions of the Access Directive, including those on non-discrimination and interoperability, apply also to the technicalities of access under this Regulation.*

**Amendment 2**  
**Proposal for a regulation**  
**Recital 20**

*Text proposed by the Commission*

(20) A wholesale roaming access obligation should cover access to all the elements and facilities necessary to enable the provision of roaming services, such as the following elements: access to network elements and associated facilities; access to relevant software systems including operational support systems; access to information systems or databases for pre-ordering, provisioning, ordering, maintaining and repair requests, and billing; access to number translation or systems offering equivalent functionality; access to mobile networks, and access to virtual network services.

*Amendment*

(20) A wholesale roaming access obligation should, ***in accordance with the relevant provisions of the Access Directive***, cover access to all the elements and facilities necessary to enable the provision of roaming services, such as the following elements: access to network elements and associated facilities; access to relevant software systems including operational support systems; access to information systems or databases for pre-ordering, provisioning, ordering, maintaining and repair requests, and billing; access to number translation or systems offering equivalent functionality; access to mobile networks, and access to virtual network services.

Or. en

**Amendment 3**  
**Proposal for a regulation**  
**Recital 22**

*Text proposed by the Commission*

(22) Consumers should have the right to opt for the separate sale of roaming services from their domestic mobile package. ***Basic principles*** should be laid down with regard to the ***provision of*** a separate sale of roaming services ***which*** should ***be introduced*** in a coordinated manner across the Union. ***Consumers should be able*** to choose a different provider for roaming services without changing their number, ***and in a manner which ensures interoperability of services***, with roaming services being provided anywhere in the Union and with the same level of quality.

*Amendment*

(22) Consumers should have the right, ***in a consumer-friendly way***, to opt for the separate sale of roaming services from their domestic mobile package. ***There are currently several ways in which a facility for separate sale of roaming services could be technically implemented, including dual IMSI (two separate International Mobile Subscriber Identities on the same SIM card), single IMSI (the sharing of one International Mobile Subscriber Identity between the home and roaming provider) and combinations of dual or single IMSI with a right for the subscriber to transfer to a provider in a***

*visited country (local break out). While this Regulation should not lay down any particular technical solution to achieve the aim of enabling separate sale of roaming services, but instead pave the way for the most effective and efficient solution, including combined solutions, to be developed by BEREC in close cooperation with the Commission, essential requirements should be laid down with regard to the technical characteristics which should be met by any facility for a separate sale of roaming services. Those essential requirements should include the introduction of the possibility in a coordinated manner across the Union, for consumers to quickly and easily choose a different provider for roaming services without changing their number, with roaming services being provided anywhere in the Union and with the same level of quality. Furthermore, roaming outside the Union or by third-country nationals inside the Union should not be impeded. It follows from the essential requirements that any technical solution should ensure interoperability of services.*

Or. en

#### *Justification*

*The Regulation should lay down the essential criteria which any facility for a separate sale of roaming services should meet, but not prescribe any specific technological method.*

#### **Amendment 4** **Proposal for a regulation** **Recital 65**

##### *Text proposed by the Commission*

(65) In order to ensure that regulatory obligations on wholesale and retail charges for voice, SMS and data roaming services are not maintained longer than necessary when the structural solutions are fully in

##### *Amendment*

(65) In order to ensure that regulatory obligations on wholesale and retail charges for voice, SMS and data roaming services are not maintained longer than necessary when the structural solutions are fully in



place and competition is sufficiently developed in the roaming market, *conditions should be set for non-application of maximum wholesale and retail charges already before the deadlines foreseen. Such conditions should be based on a significant difference between price caps and actual price levels. It is considered that a significant difference will be reached if prices have on average in the Union reached 75% of the price cap. For wholesale price caps the 75% criterion shall be based on the unbalanced traffic between operators that do not belong to the same group. In order to limit distortions between Member States, the 75% criterion for retail price caps shall be calculated by averaging at the Union level the national averages for each roaming service separately (voice, SMS or data).*

place and competition is sufficiently developed in the roaming market, *the Commission shall review the operation of this Regulation in 2016 and analyse whether the objectives of this Regulation have been achieved.*

Or. en

#### *Justification*

*The maximum wholesale and retail charges should be removed only when there is effective competition. Therefore, this decision should be left to the review, which should be held in 2016 in order to allow sufficient time for competition based on the structural measures to develop.*

#### **Amendment 5 Proposal for a regulation Recital 66 a (new)**

*Text proposed by the Commission*

*Amendment*

*(66a) There are important disparities between regulated roaming tariffs within the Union and roaming tariffs incurred by consumers when they are travelling outside the Union, which remain high compared to prices within the Union. Due to the absence of a consistent approach on transparency and safeguard measures concerning roaming outside the Union, consumers are not confident about their*

*rights and therefore often deterred from using mobile services while abroad. That has an indirect adverse impact on the development of the internal market for roaming services. It is therefore necessary to address this problem by also applying certain transparency and safeguard measures to roaming services provided outside the Union.*

Or. en

#### *Justification*

*As consumers are still in danger of bill-shock when travelling to third countries, certain safeguard provisions should be extended to also include roaming services (voice, SMS, data) outside the Union. This amendment is part of a block of amendments to that end. The other AMs concerned are 6, 8-9, 40-43, 46 (partly) and 47-50.*

#### **Amendment 6** **Proposal for a regulation** **Recital 67**

##### *Text proposed by the Commission*

(67) In order to improve the transparency of retail prices for ***making and receiving regulated roaming calls within the Union*** and to help roaming customers make decisions on the use of their mobile telephones while abroad, providers of mobile telephony services should enable their roaming customers easily to obtain information free of charge on the roaming charges applicable to them when ***making or receiving voice calls*** in a visited ***Member State***. Moreover, providers should give their customers, on request and free of charge, additional information on the per-minute or per-unit data charges (including VAT) for the making or receiving of voice calls and also for the sending and receiving of SMS, MMS and other data communication services in the visited Member State. Since certain customer groups might be well informed about roaming charges operators should provide

##### *Amendment*

(67) In order to improve the transparency of retail prices for the ***use of roaming services*** and to help roaming customers make decisions on the use of their mobile telephones while abroad, ***when travelling both within and outside the Union***, providers of mobile telephony services should enable their roaming customers easily to obtain information free of charge on the roaming charges applicable to them when ***using roaming services*** in a visited ***country***. Moreover, providers should give their customers, ***provided that they are located in the Union***, on request and free of charge, additional information on the per-minute or per-unit data charges (including VAT) for the making or receiving of voice calls and also for the sending and receiving of SMS, MMS and other data communication services in the visited Member State. Since certain customer groups might be well informed

a possibility to easily opt-out from this automatic message service.

about roaming charges operators should provide a possibility to easily opt-out from this automatic message service.

Or. en

**Amendment 7**  
**Proposal for a regulation**  
**Recital 68**

*Text proposed by the Commission*

(68) Transparency also requires that providers furnish information on roaming charges, in particular on the Eurotariff and the all-inclusive flat-rate should they offer one, when subscriptions are taken out and each time there is a change in roaming charges. Home providers should provide information on roaming charges by appropriate means such as invoices, the internet, TV advertisements or direct mail. Home providers should ensure that all their roaming customers are aware of the availability of regulated tariffs for the period concerned and should send a clear and unbiased communication to these customers describing the conditions of the Eurotariff and the right to switch to and from it.

*Amendment*

(68) Transparency also requires that providers furnish information on roaming charges, in particular on the Eurotariff and the all-inclusive flat-rate should they offer one, when subscriptions are taken out and each time there is a change in roaming charges. ***All information and offers should be presented in a clear, comprehensive and easily accessible form with regard to prices and service characteristics.*** Home providers should provide information on roaming charges by appropriate means such as invoices, the internet, TV advertisements or direct mail. Home providers should ensure that all their roaming customers are aware of the availability of regulated tariffs for the period concerned and should send a clear and unbiased communication to these customers describing the conditions of the Eurotariff and the right to switch to and from it.

Or. en

*Justification*

*Although decoupling may bring more transparency as to the charges for different mobile services, it may also result in greater tariff complexity. Therefore, home providers are required to inform their customers about the possibility to choose an alternative roaming provider in a clear manner. Moreover, consumers must be provided with understandable and transparent information with regard to prices and service characteristics.*

**Amendment 8**  
**Proposal for a regulation**  
**Recital 70**

*Text proposed by the Commission*

(70) In particular, mobile operators should provide their roaming customers with personalised tariff information on the charges applicable to those customers for data roaming services every time they initiate a data roaming service on entering another **Member State**. This information should be delivered to their mobile telephone or other mobile device in the manner best suited to its easy receipt and comprehension.

*Amendment*

(70) In particular, mobile operators should provide their roaming customers with personalised tariff information on the charges applicable to those customers for data roaming services every time they initiate a data roaming service on entering another **country**. This information should be delivered to their mobile telephone or other mobile device in the manner best suited to its easy receipt and comprehension.

Or. en

**Amendment 9**  
**Proposal for a regulation**  
**Recital 71**

*Text proposed by the Commission*

(71) In order to facilitate customers' understanding of the financial consequences of the use of **regulated** data roaming services and to permit them to monitor and control their expenditure, the home provider should give examples for data roaming applications, such as e-mail, picture and web-browsing, by indicating their approximate size in terms of data usage.

*Amendment*

(71) In order to facilitate customers' understanding of the financial consequences of the use of data roaming services and to permit them to monitor and control their expenditure, the home provider should give examples for data roaming applications, such as e-mail, picture and web-browsing, by indicating their approximate size in terms of data usage.

Or. en

**Amendment 10**  
**Proposal for a regulation**  
**Recital 74**

*Text proposed by the Commission*

*Amendment*

***(74) However, since the entry into force of the amendments introduced by Regulation (EC) No 544/2009, it has been observed that it is less probable that customers under pre-paid tariffs suffer from ‘bill shocks’ for the use of data roaming services, given that the amount of credit available is already chosen in advance. In addition, with the transitory Euro-data tariff with regulated rates for data roaming charges, these consumers will also benefit from additional protection against high prices for these services. For these reasons, the cut off limit provisions should not apply to customers under pre-paid contracts.***

***deleted***

Or. en

*Justification*

*European consumers are currently protected by an automatic safeguard against data roaming bill-shocks. Post-paid and pre-paid customers should enjoy the same level of protection. The safeguard mechanism for pre-paid customers should therefore not be abolished.*

**Amendment 11**

**Proposal for a regulation**

**Article 2 – paragraph 2 – point k**

*Text proposed by the Commission*

*Amendment*

(k) ‘regulated data roaming service’ means a roaming service enabling the use of packet switched data communications by a roaming customer by means of his mobile telephone or other mobile device while it is connected to a visited network. A regulated data roaming service does not include the transmission or receipt of regulated roaming calls ***or*** SMS messages, ***but does include the transmission and receipt of*** MMS messages;

(k) ‘regulated data roaming service’ means a roaming service enabling the use of packet switched data communications by a roaming customer by means of his mobile telephone or other mobile device while it is connected to a visited network. A regulated data roaming service does not include the transmission or receipt of regulated roaming calls, SMS messages ***or*** MMS messages;

*Justification*

*To address the problems noted by BEREC, MMS should be excluded from the definition of data roaming service, while remaining covered by the transparency provisions.*

**Amendment 12****Proposal for a regulation****Article 2 – paragraph 2 – point o**

*Text proposed by the Commission*

*Amendment*

*(o) ‘European Union (EU) roaming profile’ means a preconfigured profile for the provision of separate roaming services, which is provided in addition to a profile for the provision of domestic mobile services on the same SIM card.*

*deleted*

Or. en

*Justification*

*While the Commission's proposal points in a direction (dual IMSI) the Rapporteur feels would technically be a feasible means of stimulating user choice and competition, there could also be other ways, such as a combination of single IMSI and local break out, which may turn out to be more attractive overall. The Regulation should as a matter of principle be neutral as to the technical means used to effectuate the decoupling, considering also the possibility of new and more effective and efficient alternative methods in future.*

**Amendment 13****Proposal for a regulation****Article 3 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*1a. Pricing for interconnection relating to the provision of the facility for separate sale of roaming services established under Article 5 shall be cost-orientated.*

Or. en

*Justification*

*Moved from Article 5 as pricing for interconnection refers to wholesale pricing.*

**Amendment 14**  
**Proposal for a regulation**  
**Article 3 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

**2. Wholesale roaming access shall cover access to all network elements and associated facilities, relevant services, software and information systems, necessary for the provision of roaming services to customers.**      **deleted**

Or. en

*Justification*

*The modalities for access and interconnection under this Regulation should be consistent with the Access Directive 2002/19 in order to minimise risks of differing interpretations which could e.g. be created by introducing a separate definition of access in this Regulation. The relevant provisions of the Access Directive include obligations related to non-discrimination and interoperability. See AM 17.*

**Amendment 15**  
**Proposal for a regulation**  
**Article 3 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. Wholesale roaming access request shall be granted within a **two** month period from the receipt of the request by the network operator.

3. Wholesale roaming access request shall be granted within a **three** month period from the receipt of the request by the network operator.

Or. en

**Amendment 16**  
**Proposal for a regulation**  
**Article 3 – paragraph 4**

*Text proposed by the Commission*

4. In order to ensure a consistent regulatory approach to the wholesale access for the provision of roaming services, BEREC in close co-operation with the Commission, shall lay down guidelines for wholesale access conditions for the purpose of providing roaming services.

*Amendment*

4. In order to ensure a consistent regulatory approach to the wholesale access for the provision of roaming services, BEREC in close co-operation with the Commission, shall ***within six months after the adoption of this Regulation***, lay down guidelines for wholesale access conditions for the purpose of providing roaming services.

Or. en

**Amendment 17**  
**Proposal for a regulation**  
**Article 3 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. The relevant provisions of Articles 3 and 4 ("General framework for access and interconnection" and "Rights and obligations for undertakings"), 9 and 10 ("Obligation of transparency" and "Obligation of non-discrimination") and 12 ("Obligations of access to, and use of, specific network facilities") of the Access Directive shall apply to access and interconnection hereunder.***

Or. en

**Amendment 18**  
**Proposal for a regulation**  
**Article 4 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. ***Home*** providers shall enable their subscribers to access voice, SMS and data roaming services of any interconnected alternative roaming provider.

1. ***With effect from 1 July 2014, home*** providers shall enable their subscribers to access voice, SMS and data roaming services of any interconnected alternative roaming provider.



**Amendment 19**  
**Proposal for a regulation**  
**Article 4 – paragraph 2**

*Text proposed by the Commission*

2. ***With effect from 1 July 2014***, home providers shall inform all their roaming customers of the possibility to unsubscribe from their existing roaming services and to opt for roaming services from an alternative roaming provider. ***The roaming customers shall be given a period of two months within which to make their choice known to their home provider.*** Roaming customers ***who have not expressed their choice within that period*** shall have the right to opt for an alternative roaming provider at any moment, in line with paragraphs 3 and 4.

*Amendment*

2. ***Before the date mentioned in paragraph 1***, home providers shall inform all their roaming customers ***in a clear, comprehensive and easily accessible form about*** the possibility to unsubscribe from their existing roaming services and to opt for roaming services from an alternative roaming provider. Roaming customers shall have the right to opt for an alternative roaming provider at any moment, in line with paragraphs 3 and 4.

Or. en

*Justification*

*Consumers are usually less willing to switch to other offers. In order to allow them to make an informed choice, home providers should be required to inform their customers about the changes and the possibility to choose an alternative roaming provider in a clear and understandable manner.*

**Amendment 20**  
**Proposal for a regulation**  
**Article 4 – paragraph 4**

*Text proposed by the Commission*

4. Any switch to or from an alternative roaming provider shall be free of charge and shall not entail conditions or restrictions pertaining to elements of the subscription other than roaming, and shall be carried out within ***five*** working days, save that where a roaming customer who has subscribed to a domestic package

*Amendment*

4. Any switch to or from an alternative roaming provider, ***or between alternative roaming providers***, shall be free of charge and shall not entail conditions or restrictions pertaining to elements of the subscription other than roaming, and shall be carried out within ***three*** working days, save that where a roaming customer who

which includes roaming prices other than the Eurotariff, Euro-SMS tariff or Euro-data tariff, the home provider may delay the switch from the old to the new subscription concerning roaming services for a specified period not exceeding **three** months.

has subscribed to a domestic package which includes roaming prices other than the Eurotariff, Euro-SMS tariff or Euro-data tariff, the home provider may delay the switch from the old to the new subscription concerning roaming services for a specified period not exceeding **two** months.

Or. en

### *Justification*

*The switching period between different roaming providers is too long and does not reflect consumer expectations. Therefore switching should be possible within maximum three working days. In case the customer subscribes to a domestic package which includes roaming prices other than Eurotariff, Euro-SMS tariff or Euro-data tariff, the suggested switching period of three months is too extensive and should not exceed two months.*

## **Amendment 21** **Proposal for a regulation** **Article 4 – paragraph 5**

### *Text proposed by the Commission*

5. At the time of making or renewing a contract on mobile communication services, home providers shall provide all customers individually with full information on the possibility to choose ***an alternative roaming provider and facilitate the conclusion of a contract with*** an alternative roaming provider. Customers concluding a contract with the home provider for roaming services shall explicitly confirm that they have been informed of such possibility. The providers of mobile communications services shall not prevent retailers serving as their points of sale to offer contracts for separate roaming services with alternative roaming providers.

### *Amendment*

5. At the time of making or renewing a contract on mobile communication services, home providers shall provide all customers individually with full information on the possibility to choose an alternative roaming provider. Customers concluding a contract with the home provider for roaming services shall explicitly confirm that they have been informed of such possibility. The providers of mobile communications services shall not prevent retailers serving as their points of sale to offer contracts for separate roaming services with alternative roaming providers.

Or. en

*Justification*

*See AM 22, addressing the case of one operator obstructing a transfer to another.*

**Amendment 22**  
**Proposal for a regulation**  
**Article 4 – paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***5a. National regulatory authorities shall use their powers under Article 16, inter alia, to ensure that appropriate penalties, including an obligation to compensate subscribers, are levied on providers where a subscriber's switch to an alternative roaming provider is delayed or otherwise hindered.***

Or. en

*Justification*

*Similarly to the provisions on porting in the Universal Services Directive and to ensure consistency with that Directive, providers should not be obliged to facilitate the conclusion of contracts with competitors (a matter which also depends on how the alternative provider acts), but should be subject to effective sanctions in case of obstruction.*

**Amendment 23**  
**Proposal for a regulation**  
**Article 5 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

In order to ensure the development of the single market, implementation of the technical solutions for the facility of separate sale of roaming services shall ***take place simultaneously across the Union.***

In order to ensure the development of the single market, implementation of the technical solutions for the facility of separate sale of roaming services shall ***in particular meet the following essential requirements:***

Or. en

**Amendment 24**  
**Proposal for a regulation**  
**Article 5 – paragraph 1 – point a (new)**

*Text proposed by the Commission*

*Amendment*

***(a) implementation of the technical solutions shall take place simultaneously across the Union;***

Or. en

**Amendment 25**  
**Proposal for a regulation**  
**Article 5 – paragraph 1 – point b (new)**

*Text proposed by the Commission*

*Amendment*

***(b) end-users shall be able to keep their existing mobile phone number;***

Or. en

**Amendment 26**  
**Proposal for a regulation**  
**Article 5 – paragraph 1 – point c (new)**

*Text proposed by the Commission*

*Amendment*

***(c) end-users shall be able to easily and quickly switch to an alternative roaming provider and between alternative roaming providers while retaining their domestic operator;***

Or. en

**Amendment 27**  
**Proposal for a regulation**  
**Article 5 – paragraph 1 – point d (new)**

*Text proposed by the Commission*

*Amendment*

***(d) roaming by Union citizens in third countries or by third-country citizens in the Union shall not be impeded;***

Or. en

*Justification*

*The wording of the proposed Regulation should remain neutral in terms of the structural solution of decoupling. Given the rapid technology development, it would be premature to promote a single solution as there may be more suitable solutions in the future. The proposal should focus on the essential requirements any technical solution should meet, including that the consumer can retain the same number. It follows from the essential requirements, as well as from the Access Directive, that any solution must allow for a maximum degree of interoperability to avoid any technical lock-in.*

**Amendment 28**  
**Proposal for a regulation**  
**Article 5 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

For the purpose of separate sale of roaming services, operators shall make sure that facilities are in place by 1 July 2014 at the latest, to ***ensure that the customer can use domestic mobile services and separate roaming services offered by an alternative roaming operator while keeping their mobile number. In order to enable*** the separate sale of roaming services, ***operators may in particular allow the use of a ‘EU roaming profile’ on the same SIM card and the use of the same terminal alongside domestic mobile services. Pricing for interconnection related to the provision of this facility shall be cost-orientated and there*** should be no direct charges to consumers for the use of this facility.

For the purpose of separate sale of roaming services, operators shall make sure that facilities ***meeting the requirements of paragraph 1*** are in place by 1 July 2014 at the latest. ***There shall be no direct charges to end-users for the use of the facility for*** separate sale of roaming services.

Or. en

**Amendment 29**  
**Proposal for a regulation**  
**Article 5 – paragraph 3**

*Text proposed by the Commission*

BEREC, after consulting stakeholders and in close co-operation with the Commission, shall lay down within a reasonable period of time not exceeding three months after the adoption of this Regulation guidelines with regard to harmonised technical solutions relating to the facility for separate roaming services and to harmonised procedures to change the provider of roaming services. Upon a reasoned request from the BEREC, the Commission may extend that period.

*Amendment*

BEREC, after consulting stakeholders and in close co-operation with the Commission, shall lay down, within a reasonable period of time not exceeding three months after the adoption of this Regulation, guidelines ***meeting the essential requirements set out in paragraph 1*** with regard to harmonised technical solutions relating to the facility for separate roaming services and to harmonised procedures to change the provider of roaming services. Upon a reasoned request from the BEREC, the Commission may extend that period.

***BEREC shall keep the guidelines under review and, taking into account their practical application, issue revised guidelines if necessary to achieve the essential requirements in a more effective or efficient manner.***

Or. en

*Justification*

*BEREC should follow closely the implementation of those guidelines and issue revised guidelines if it develops that the effectiveness and efficiency of the initial guidelines should be improved.*

**Amendment 30**  
**Proposal for a regulation**  
**Article 5 – paragraph 4**

*Text proposed by the Commission*

If necessary, the Commission ***could*** give a mandate to a European Standardisation Body for the adaptation of the relevant standards that are necessary for the harmonised implementation of the facility.

*Amendment*

If necessary, the Commission ***shall*** give a mandate to a European Standardisation Body for the adaptation of the relevant standards that are necessary for the harmonised implementation of the facility.

***The Commission, after having consulted***

***BEREC, shall be empowered to adopt delegated acts in accordance with Article 18a in order to establish harmonised technical solutions relating both to the facility for separate roaming services and to harmonised procedures to change the provider of roaming services.***

Or. en

*Justification*

*In order to provide for a legally binding and directly applicable act, the Commission, after consulting BEREC, should be empowered (but not obliged) to adopt delegated acts to ensure uniform conditions for the implementation of the facility for separate sale. The Commission should be able to adopt such delegated acts quickly.*

**Amendment 31**  
**Proposal for a regulation**  
**Article 6 – paragraph 1**

*Text proposed by the Commission*

1. The average wholesale charge that the operator of a visited network may levy from the customer's home provider for the provision of a regulated roaming call originating on that visited network, inclusive inter alia of origination, transit and termination costs, shall not exceed EUR **0,14** per minute as of 1 July 2012 .

*Amendment*

1. The average wholesale charge that the operator of a visited network may levy from the customer's home provider for the provision of a regulated roaming call originating on that visited network, inclusive inter alia of origination, transit and termination costs, shall not exceed EUR **0,10** per minute as of 1 July 2012 .

Or. en

**Amendment 32**  
**Proposal for a regulation**  
**Article 6 – paragraph 2**

*Text proposed by the Commission*

2. The average wholesale charge referred to in paragraph 1 shall apply between any pair of operators and shall be calculated over a twelve-month period or any such shorter period as may remain before the end of the period of application of a

*Amendment*

2. The average wholesale charge referred to in paragraph 1 shall apply between any pair of operators and shall be calculated over a twelve-month period or any such shorter period as may remain before the end of the period of application of a

maximum average wholesale charge as provided for in this paragraph or the expiry of this Regulation. The maximum average wholesale charge shall decrease to EUR **0,10** and EUR **0,06**, on 1 July 2013 and on 1 July 2014 respectively. Without prejudice to Article **13**, the maximum average wholesale charge shall remain at EUR **0,06** for the duration of this Regulation.

maximum average wholesale charge as provided for in this paragraph or the expiry of this Regulation. The maximum average wholesale charge shall decrease to EUR **0,07** and EUR **0,04**, on 1 July 2013 and on 1 July 2014 respectively. Without prejudice to Article **19**, the maximum average wholesale charge shall remain at EUR **0,04** for the duration of this Regulation.

Or. en

**Amendment 33**  
**Proposal for a regulation**  
**Article 7 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

The retail charge (excluding VAT) of a Eurotariff which a home provider may levy from its roaming customer for the provision of a regulated roaming call may vary for any roaming call but shall not exceed EUR **0,32** per minute for any call made or EUR **0,11** per minute for any call received as of 1 July 2012. The price ceiling for calls made shall decrease to EUR **0,28** and EUR **0,24** on 1 July 2013 and on 1 July 2014 respectively, and for calls received to EUR **0,10** on 1 July 2013. Without prejudice to **Articles 13 and 19** these regulated maximum retail charges for the Eurotariff shall remain valid until 30 June 2016.

*Amendment*

The retail charge (excluding VAT) of a Eurotariff which a home provider may levy from its roaming customer for the provision of a regulated roaming call may vary for any roaming call but shall not exceed EUR **0,20** per minute for any call made or EUR **0,07** per minute for any call received as of 1 July 2012. The price ceiling for calls made shall decrease to EUR **0,15** and EUR **0,10** on 1 July 2013 and on 1 July 2014 respectively, and for calls received to EUR **0,06** on 1 July 2013, **and 0,05 on 1 July 2014**. Without prejudice to **Article 19** these regulated maximum retail charges for the Eurotariff shall remain valid until 30 June 2017.

Or. en

**Amendment 34**  
**Proposal for a regulation**  
**Article 7 – paragraph 5**

*Text proposed by the Commission*

5. Any roaming customer may request to

*Amendment*

5. Any roaming customer may request to



switch to or from a Eurotariff. Any switch must be made within one working day of receipt of the request and free of charge and shall not entail conditions or restrictions pertaining to other elements of the subscription, save that where a roaming customer who has subscribed to a special roaming package which includes more than one roaming service (namely, voice, SMS and/or data) wishes to switch to a Eurotariff, the home provider may require the switching customer to forego the benefits of the other elements of that package. A home provider may delay a switch until the previous roaming tariff has been effective for a minimum specified period not exceeding *three* months.

switch to or from a Eurotariff. Any switch must be made within one working day of receipt of the request and free of charge and shall not entail conditions or restrictions pertaining to other elements of the subscription, save that where a roaming customer who has subscribed to a special roaming package which includes more than one roaming service (namely, voice, SMS and/or data) wishes to switch to a Eurotariff, the home provider may require the switching customer to forego the benefits of the other elements of that package. A home provider may delay a switch until the previous roaming tariff has been effective for a minimum specified period not exceeding *two* months.

Or. en

**Amendment 35**  
**Proposal for a regulation**  
**Article 8 – paragraph 1**

*Text proposed by the Commission*

1. With effect from 1 July 2012, the average wholesale charge that the operator of a visited network may levy from the customer's home provider, for the provision of a regulated roaming SMS message originating on that visited network, shall not exceed EUR 0,03 per SMS message. The maximum average wholesale charge for the provision of a regulated roaming SMS message shall decrease to EUR **0,02** on 1 July 2014. Without prejudice to Article **13** the regulated wholesale charge for the provision of regulated roaming SMS messages shall remain at EUR **0,02** for the duration of this Regulation.

*Amendment*

1. With effect from 1 July 2012, the average wholesale charge that the operator of a visited network may levy from the customer's home provider, for the provision of a regulated roaming SMS message originating on that visited network, shall not exceed EUR 0,03 per SMS message, and shall decrease to EUR **0,02** on 1 July 2013 and to EUR **0,01** on 1 July 2014. Without prejudice to Article **19** the regulated wholesale charge for the provision of regulated roaming SMS messages shall remain at EUR **0,01** for the duration of this Regulation.

Or. en

**Amendment 36**  
**Proposal for a regulation**  
**Article 9 – paragraph 2**

*Text proposed by the Commission*

2. With effect from 1 July 2012, the retail charge (excluding VAT) of a Euro-SMS tariff which a home provider may levy from its roaming customer for a regulated roaming SMS message sent by that roaming customer *may vary for any roaming SMS message but shall not exceed* EUR **0,10**. Without prejudice to *Articles 13 and 19*, the regulated maximum retail charge for the Euro-SMS tariff shall remain at EUR **0,10** until 30 June 2016.

*Amendment*

2. With effect from 1 July 2012, the retail charge (excluding VAT) of a Euro-SMS tariff which a home provider may levy from its roaming customer for a regulated roaming SMS message sent by that roaming customer shall *reduce to* EUR **0,07 on 1 July 2012, to 0,06 on 1 July 2013 and to 0,05 on 1 July 2014**. Without prejudice to *Article 19*, the regulated maximum retail charge for the Euro-SMS tariff shall remain at EUR **0,05** until 30 June 2017.

Or. en

**Amendment 37**  
**Proposal for a regulation**  
**Article 9 – paragraph 6**

*Text proposed by the Commission*

6. Any roaming customer may request to switch to or from a Euro-SMS tariff at any time. Any switch must be made within one working day of receipt of the request and free of charge and shall not entail conditions or restrictions pertaining to elements of the subscription other than roaming. A home provider may delay such a switch until the previous roaming tariff has been effective for a minimum specified period not exceeding *three* months. A Euro-SMS tariff may always be combined with a Eurotariff.

*Amendment*

6. Any roaming customer may request to switch to or from a Euro-SMS tariff at any time. Any switch must be made within one working day of receipt of the request and free of charge and shall not entail conditions or restrictions pertaining to elements of the subscription other than roaming. A home provider may delay such a switch until the previous roaming tariff has been effective for a minimum specified period not exceeding *two* months. A Euro-SMS tariff may always be combined with a Eurotariff.

Or. en

**Amendment 38**  
**Proposal for a regulation**  
**Article 11 – paragraph 1**

*Text proposed by the Commission*

1. With effect from 1 July 2012 the average wholesale charge that the operator of a visited network may levy from the roaming customer's home provider for the provision of regulated data roaming services by means of that visited network shall not exceed a safeguard limit of EUR **0,30**, EUR **0,20** as of 1 July 2013 and EUR 0,10 as of 1 July 2014 per megabyte of data transmitted. Without prejudice to Article **13** the maximum average wholesale charge for the provision of regulated data roaming services shall remain at EUR 0,10 per megabyte of data transmitted for the duration of this Regulation.

*Amendment*

1. With effect from 1 July 2012 the average wholesale charge that the operator of a visited network may levy from the roaming customer's home provider for the provision of regulated data roaming services by means of that visited network shall not exceed a safeguard limit of EUR **0,25**, EUR **0,15** as of 1 July 2013 and EUR 0,10 as of 1 July 2014 per megabyte of data transmitted. Without prejudice to Article **19** the maximum average wholesale charge for the provision of regulated data roaming services shall remain at EUR 0,10 per megabyte of data transmitted for the duration of this Regulation.

Or. en

**Amendment 39**  
**Proposal for a regulation**  
**Article 12 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

With effect from 1 July 2012, the retail charge (excluding VAT) of a Euro-data tariff which a home provider may levy from its roaming customer for the provision of a regulated roaming data shall not exceed EUR **0,90** per megabyte. The price ceiling for data used shall decrease to EUR **0,70** and EUR **0,50**, per megabyte used on 1 July 2013 and on 1 July 2014 respectively. Without prejudice to **Articles 13 and 19**, the regulated maximum retail charge shall remain at EUR **0,50**, per megabyte used until 30 June 2016.

*Amendment*

With effect from 1 July 2012, the retail charge (excluding VAT) of a Euro-data tariff which a home provider may levy from its roaming customer for the provision of a regulated roaming data shall not exceed EUR **0,50** per megabyte. The price ceiling for data used shall decrease to EUR **0,30** and EUR **0,20**, per megabyte used on 1 July 2013 and on 1 July 2014 respectively. Without prejudice to **Article 19**, the regulated maximum retail charge shall remain at EUR **0,20**, per megabyte used until 30 June 2017.

Or. en

**Amendment 40**  
**Proposal for a regulation**  
**Article 12 – paragraph 5**

*Text proposed by the Commission*

5. Any roaming customer may request to switch to or from a Euro-data tariff respecting their contractual conditions at any point in time. Any switch must be made within one working day of receipt of the request and free of charge and shall not entail conditions or restrictions pertaining to elements of the subscription other than roaming. A home provider may delay such a switch until the previous roaming tariff has been effective for a minimum specified period not exceeding **three** months. A Euro-data tariff may always be combined with a Euro-SMS tariff and a Eurotariff.

*Amendment*

5. Any roaming customer may request to switch to or from a Euro-data tariff respecting their contractual conditions at any point in time. Any switch must be made within one working day of receipt of the request and free of charge and shall not entail conditions or restrictions pertaining to elements of the subscription other than roaming. A home provider may delay such a switch until the previous roaming tariff has been effective for a minimum specified period not exceeding **two** months. A Euro-data tariff may always be combined with a Euro-SMS tariff and a Eurotariff.

Or. en

*Justification*

*The switching to or from a Euro-data tariff should be possible within a maximum of one working day. In case the customer subscribes to a domestic package which includes roaming prices other than Eurotariff, Euro-SMS tariff or Euro-data tariff, the suggested switching period of three months is too extensive and therefore the switching period should not exceed two months.*

**Amendment 41**  
**Proposal for a regulation**  
**Article 13**

*Text proposed by the Commission*

**Article 13**

***Conditions for advance non-application of maximum wholesale and retail charges***

***1. In order to assess the competitive development in the roaming markets BEREK shall collect regularly data on the development of retail and wholesale charges for voice, SMS and data roaming services. These data shall be notified to***

*Amendment*

***deleted***

*the Commission, at least twice a year. The Commission shall make them public.*

*2. If, after 30 June 2018, the average wholesale charge for one of the roaming services (voice, SMS or data) for unbalanced traffic between operators that do not belong to the same group falls to 75% or less of the maximum wholesale charges provided for in Articles 6(2), 8(1) and 11(1), the maximum wholesale charges for the roaming service concerned shall no longer apply. The Commission shall regularly verify, on the basis of the market data collected by BEREC, whether this condition is met and, if so, it shall publish without delay in the C series of the Official Journal of the European Union the data proving that the maximum wholesale charges no longer apply for the service concerned.*

*3. If, following the implementation of the separate sale of roaming services referred to in Article 5 and before 1 July 2016, the average retail charge at the Union level falls to 75% or less of the maximum retail charges provided for in Articles 7(2), 9(2) and 12(2), the maximum retail charges for that roaming services shall no longer apply. The Commission shall regularly verify, on the basis of the market data collected by BEREC, whether this condition is met and, if so, it shall publish without delay in the C series of the Official Journal of the European Union the data proving that the maximum retail charges no longer apply for the service concerned.*

*4. The relevant maximum charges shall cease to apply as from the first day of the month following the publication of the data proving that the conditions of paragraphs 2 or 3 respectively are satisfied.*

Or. en

### *Justification*

*If competition develops as expected and prices reduce substantially below the safeguards, the safeguards automatically become less important. A possibility for advance lifting of the caps appears technically complex to draft appropriately and the Commission's proposed proxy for competition (the 75% threshold) is blunt. Therefore, the possibility for advance lifting of caps should be connected to the review under Article 19 (which is proposed to be broadened and to include the reporting requirement on BEREC proposed as Art 13(1) by the Commission.*

#### **Amendment 42** **Proposal for a regulation** **Article 14 – title**

##### *Text proposed by the Commission*

Transparency of retail charges for *regulated* roaming calls and SMS messages

##### *Amendment*

Transparency of retail charges for roaming calls and SMS messages

Or. en

#### **Amendment 43** **Proposal for a regulation** **Article 14 – paragraph 1 – subparagraph 1**

##### *Text proposed by the Commission*

To alert a roaming customer to the fact that he will be subject to roaming charges when making or receiving a call or when sending an SMS message, each home provider shall, except when the customer has notified his home provider that he does not require this service, provide the customer, automatically by means of a Message Service, without undue delay and free of charge, when he enters a **Member State** other than that of his home network, with basic personalised pricing information on the roaming charges (including VAT) that apply to the making and receiving of calls and to the sending of SMS messages by that customer in the visited **Member State**.

##### *Amendment*

To alert a roaming customer to the fact that he will be subject to roaming charges when making or receiving a call or when sending an SMS message, each home provider shall, except when the customer has notified his home provider that he does not require this service, provide the customer, automatically by means of a Message Service, without undue delay and free of charge, when he enters a **country** other than that of his home network, with basic personalised pricing information on the roaming charges (including VAT) that apply to the making and receiving of calls and to the sending of SMS messages by that customer in the visited **country**.

Or. en

**Amendment 44**  
**Proposal for a regulation**  
**Article 14 – paragraph 1 – subparagraph 2 – point b**

*Text proposed by the Commission*

(b) sending *regulated* roaming SMS messages while in the visited *Member State*.

*Amendment*

(b) sending roaming SMS messages while in the visited *country*.

Or. en

**Amendment 45**  
**Proposal for a regulation**  
**Article 14 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

It shall also include the free of charge number referred to in paragraph 2 for obtaining more detailed information and information on the possibility of accessing emergency services by dialling the European emergency number 112 free of charge.

*Amendment*

It shall also include the free of charge number referred to in paragraph 2 for obtaining more detailed information and, *if applicable*, information on the possibility of accessing emergency services by dialling the European emergency number 112 free of charge.

Or. en

**Amendment 46**  
**Proposal for a regulation**  
**Article 14 – paragraph 2**

*Text proposed by the Commission*

2. In addition to paragraph 1, customers shall have the right to request and receive, free of charge, and irrespective of their location within the Union, more detailed personalised pricing information on the roaming charges that apply in the visited network to voice calls, SMS, MMS and other data communication services, and information on the transparency measures

*Amendment*

2. In addition to paragraph 1, customers shall have the right to request and receive, free of charge, and irrespective of their location within the Union, more detailed personalised pricing information on the roaming charges that apply in the visited network to voice calls, SMS, MMS and other data communication services, and information on the transparency measures

applicable by virtue of this Regulation, by means of a mobile voice call or by SMS. Such a request shall be to a free-of-charge number designated for this purpose by the home provider. Obligations provided for in paragraph 1 shall not apply to machine to machine (M2M) type of devices *that use mobile communication*.

applicable by virtue of this Regulation, by means of a mobile voice call or by SMS. Such a request shall be to a free-of-charge number designated for this purpose by the home provider. Obligations provided for in paragraph 1 shall not apply to machine to machine (M2M) type of devices *or other devices which do not support SMS functionality*.

Or. en

#### **Amendment 47**

##### **Proposal for a regulation**

##### **Article 15 – paragraph 1 – subparagraph 1**

###### *Text proposed by the Commission*

Home providers shall ensure that their roaming customers, both before and after the conclusion of a contract, are kept adequately informed of the charges which apply to their use of *regulated* data roaming services, in ways which facilitate customers' understanding of the financial consequences of such use and permit them to monitor and control their expenditure on *regulated* data roaming services in accordance with paragraphs 2 and 3. The safeguard mechanisms referred to in paragraph 3 shall *not* apply to pre-paid customers.

###### *Amendment*

Home providers shall ensure that their roaming customers, both before and after the conclusion of a contract, are kept adequately informed of the charges which apply to their use of data roaming services, in ways which facilitate customers' understanding of the financial consequences of such use and permit them to monitor and control their expenditure on data roaming services in accordance with paragraphs 2 and 3. The safeguard mechanisms referred to in paragraph 3 shall apply *both* to pre-paid *and to post-paid* customers.

Or. en

#### **Amendment 48**

##### **Proposal for a regulation**

##### **Article 15 – paragraph 2 – subparagraph 1**

###### *Text proposed by the Commission*

An automatic message from the home provider shall inform the roaming customer that he is roaming and provide basic personalised tariff information on the

###### *Amendment*

An automatic message from the home provider shall inform the roaming customer that he is roaming and provide basic personalised tariff information on the



charges applicable to the provision of *regulated* data roaming services to that roaming customer in the Member State concerned, except where the customer has notified his home provider that he does not require this information.

charges applicable to the provision of data roaming services to that roaming customer in the Member State concerned, except where the customer has notified his home provider that he does not require this information.

Or. en

**Amendment 49**  
**Proposal for a regulation**  
**Article 15 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

Such basic personalised tariff information shall be delivered to the roaming customer's mobile telephone or other device, for example by an SMS message, an e-mail or a pop-up window on the computer, every time the roaming customer enters a *Member State* other than that of his home network and initiates for the first time a *regulated* data roaming service in that particular *Member State*. It shall be provided free of charge at the moment the roaming customer initiates a *regulated* data roaming service, by an appropriate means adapted to facilitate its receipt and easy comprehension.

*Amendment*

Such basic personalised tariff information shall be delivered to the roaming customer's mobile telephone or other device, for example by an SMS message, an e-mail or a pop-up window on the computer, every time the roaming customer enters a *country* other than that of his home network and initiates for the first time a data roaming service in that particular *country*. It shall be provided free of charge at the moment the roaming customer initiates a data roaming service, by an appropriate means adapted to facilitate its receipt and easy comprehension.

Or. en

**Amendment 50**  
**Proposal for a regulation**  
**Article 15 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

Each home provider shall grant to all their roaming customers the opportunity to opt deliberately and free of charge for a facility which provides information on the accumulated consumption expressed in volume or in the currency in which the

*Amendment*

Each home provider shall grant to all their roaming customers the opportunity to opt deliberately and free of charge for a facility which provides information on the accumulated consumption expressed in volume or in the currency in which the

roaming customer is billed for **regulated** data roaming services and which guarantees that, without the customer's explicit consent, the accumulated expenditure for **regulated** data roaming services over a specified period of use does not exceed a specified financial limit.

roaming customer is billed for **retail** data roaming services **provided both inside and outside the Union and** which guarantees that, without the customer's explicit consent, the accumulated expenditure for **such retail** data roaming services over a specified period of use does not exceed a specified financial limit.

Or. en

#### *Justification*

*extension of the cut-off limit warnings to outside the EU territory to prevent bill-shocks*

**Amendment 51**  
**Proposal for a regulation**  
**Article 15 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. This Article shall also apply to customers who use data roaming services provided by a home provider outside the Union.***

Or. en

**Amendment 52**  
**Proposal for a regulation**  
**Article 18 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 18a***

***Exercise of the delegation***

***1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.***

***2. The power to adopt delegated acts referred to in Article 5 shall be conferred on the Commission for the duration of this Regulation.***

*3. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Commission.*

*4. A delegated act shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.*

Or. en

**Amendment 53**  
**Proposal for a regulation**  
**Article 19 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. The Commission shall review the functioning of this Regulation and, after a public consultation, shall report to the European Parliament and the Council no later than 30 June **2015**. The Commission shall evaluate in particular whether the objectives of this Regulation have been achieved. In so doing, the Commission shall review, inter alia:

*Amendment*

1. The Commission shall review the functioning of this Regulation and, after a public consultation, shall report to the European Parliament and the Council no later than 30 June **2016**. The Commission shall evaluate in particular whether the objectives of this Regulation have been achieved. In so doing, the Commission shall review, inter alia:

Or. en

*Justification*

*Given the implementation of structural remedies in 2014, it will be premature to assess the impact on the roaming market already in 2015. Therefore, the evaluation should take place later, in 2016 at the earliest to have a better picture of the market functioning. It is essential that the caps are removed only when there is a competitive market.*

**Amendment 54**  
**Proposal for a regulation**  
**Article 19 – paragraph 1 – indent 1**

*Text proposed by the Commission*

– the developments in wholesale and retail charges for the provision to roaming customers of voice, SMS and data communication services, and the corresponding development in mobile communications services at domestic level in the Member States, both for pre-paid and post-paid customers separately, and in the quality and speed of these services;

*Amendment*

– the developments **and expected future trends** in wholesale and retail charges for the provision to roaming customers of voice, SMS and data communication services, and the corresponding development in mobile communications services at domestic level in the Member States, both for pre-paid and post-paid customers separately, and in the quality and speed of these services;

Or. en

**Amendment 55**  
**Proposal for a regulation**  
**Article 19 – paragraph 2**

*Text proposed by the Commission*

2. If the report shows that the **structural** measures provided for by the present Regulation are not sufficient to promote competition in the roaming market for the benefit of European consumers, the Commission shall make appropriate proposals to the European Parliament and the Council to address this situation. The Commission shall examine, in particular, whether it is necessary to modify the structural measures or to extend the duration of any of the maximum retail charges foreseen in Articles 7, 9 and 12.

*Amendment*

2. If the report shows that the measures provided for by the present Regulation are not sufficient to promote competition in the roaming market for the benefit of European consumers, the Commission shall make appropriate proposals to the European Parliament and the Council to address this situation. The Commission shall examine, in particular, whether it is necessary to modify the structural measures, **to introduce additional ones** or to extend the duration of any of the maximum **wholesale or** retail charges foreseen in Articles **6 to 9** and **11 to 12**.

Or. en

**Amendment 56**  
**Proposal for a regulation**  
**Article 19 – paragraph 3**

*Text proposed by the Commission*

3. In addition, the Commission shall, report to the European Parliament and the Council on the functioning of the Regulation every two years after the report foreseen in paragraph 1. **The** report shall include a summary of the monitoring of the provision of roaming services in the Union and an assessment of the progress towards achieving the objectives of this Regulation, including by reference to the matters referred to in paragraph 1.

*Amendment*

3. In addition, the Commission shall **provide an interim** report to the European Parliament and the Council on the functioning of the Regulation **within two years of the [date of entry into force of this Regulation] and thereafter report** every two years after the report foreseen in paragraph 1. **Each** report shall include a summary of the monitoring of the provision of roaming services in the Union and an assessment of the progress towards achieving the objectives of this Regulation, including by reference to the matters referred to in paragraph 1.

Or. en

**Amendment 57**

**Proposal for a regulation**

**Article 19 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**3a. In order to assess the competitive developments in the roaming markets, BEREC shall regularly collect data on the development of retail and wholesale charges for voice, SMS and data roaming services. Those data shall be notified to the Commission at least twice a year. The Commission shall make them public.**

Or. en

*Justification*

*The review should be postponed one year in order to allow a full assessment of competitive developments on the various segments of the roaming market. It should also be broadened, to oblige the Commission to address not only a possible extension of the duration of the safeguard caps or modification of the structural measures but also to vary the safeguard caps, in case they can not be lifted, or introduce additional structural measures. The Commission should be guided by regular reports from BEREC (a provision moved from the Commission's proposed Article 13).*



## EXPLANATORY STATEMENT

### I. Einleitung

Millionen Bürger in Europa nutzen täglich Mobiltelefone zum Telefonieren, Versenden und Empfangen von SMS oder Surfen im Netz. Und die Zahl der Nutzer von mobilen Internetdiensten steigt täglich. Damit nimmt auch die Gruppe der potentiellen Nutzer von Roamingdiensten kontinuierlich zu. Beispielsweise gaben in einer aktuellen Eurobarometer-Umfrage über Roaming knapp drei Viertel der Befragten an, während ihres letzten Auslandsaufenthalts Dienste für die Anrufzustellung, das Versenden von Textnachrichten oder das Surfen im Internet in Anspruch genommen zu haben.<sup>1</sup>

Ungeachtet dieses Trends schalten die meisten Europäer ihre mobilen Dienste im Ausland jedoch aus Angst vor sogenannten Rechnungsschocks aus. Denn oft erreichen die Bürger nach Rückkehr aus dem Ausland horrenden Rechnungen für ihre im Ausland getätigten Mobilfunkdienste. Im Hinblick auf das Datenroaming hält nur eine Minderheit von 19 Prozent der Mobilfunknutzer, die im Ausland mit dem Handy im Netz surfen, die anfallenden Preise für fair.<sup>2</sup> Laut Kommission betragen derzeit die Durchschnittskosten pro Megabyte mehr als 2 EUR, in Extremfällen sogar bis zu 12 EUR.<sup>3</sup> Dieser Missstand ist vor allem darauf zurück zu führen, dass es auf dem Roamingmarkt nach wie vor zu wenig Wettbewerb gibt.

Überhöhte Roamingtarife und die damit geringe Nutzung von Roamingdiensten innerhalb der EU sind weder im Sinne der europäischen Verbraucher noch im Sinne der europäischen Wirtschaft. Mit dem Grundgedanken eines digitalen europäischen Binnenmarkts ist diese Entwicklung nicht vereinbar.

Mit dem vorliegenden Verordnungsvorschlag soll diesem Zustand daher Abhilfe geschaffen werden. Bereits in ihrer Digitalen Agenda für Europa<sup>4</sup> von 2010 hat die Kommission das Ziel festgelegt, die Tarife für Roaming- und Inlands-Mobilfunkdienste bis 2015 weitgehend anzugleichen. Dies hat auch das Europäische Parlament seit Jahren gefordert und die Kommission gedrängt, durch legislative Vorschläge hierauf hinzuwirken.

### II. Der bisherige Rechtsrahmen und seine Auswirkung auf den Roamingmarkt

Bereits im Juni 2007 hat das Europäische Parlament zusammen mit dem Rat eine erste Verordnung über das Roaming in öffentlichen Mobilfunknetzen in der Gemeinschaft<sup>5</sup> erlassen, um zu einem reibungslosen Funktionieren des Binnenmarkts beizutragen und gleichzeitig ein hohes Maß an Verbraucherschutz zu erreichen sowie den Wettbewerb und die

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<sup>1</sup> Special Eurobarometer 356, „Report on Roaming 2010“, February 2011, [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_356\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_356_en.pdf)

<sup>2</sup> s.o.

<sup>3</sup> Europäische Kommission, „Zwischenbericht über den Entwicklungsstand der Roamingdienste in der EU“, Juni 2010, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0356:FIN:de:PDF>

<sup>4</sup> Europäische Kommission, „Eine Digitale Agenda für Europa“, Mai 2010, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0245:FIN:DE:PDF>

<sup>5</sup> Verordnung (EG) Nr. 717/2007, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007R0717:DE:NOT>

Transparenz auf dem Markt zu fördern. Die Kommission evaluierte im Jahre 2008 die Auswirkungen dieser Verordnung und kam zu dem Schluss, dass der Wettbewerb noch immer nicht zufriedenstellend funktionierte. Folglich legte sie weitere Vorschläge zur Änderung der Roamingverordnung<sup>1</sup> vor. Diese Änderungen wurden vom Europäischen Parlament und dem Rat im Juni 2009 verabschiedet. Sie umfassten eine zeitliche Verlängerung der Verordnung und eine Ausweitung ihres Anwendungsbereichs auf SMS- und Datenroamingdienste. Diese geänderte Roamingverordnung läuft am 30. Juni 2012 aus.

Die derzeit gültige Roamingverordnung setzt Preisobergrenzen für Sprach- und SMS-Roamingdienste auf der Vorleistungs- und Endkundenebene fest. Auch beim Datenroaming wurde eine Preisobergrenze festgesetzt, allerdings nur auf der Vorleistungsebene.

Ferner wurden Transparenzvorschriften zugunsten der Verbraucher eingeführt. So müssen die Betreiber ihren Kunden Informationen über Roamingentgelte senden, sobald der Kunde in einen anderen Mitgliedstaat einreist. Außerdem gilt zur Vermeidung von Rechnungsschocks für Datenroamingdienste standardmäßig eine Kostenobergrenze von 50 EUR für alle Kunden, die nicht schon eine andere Kostenobergrenze gewählt haben.

Aus dem von der Kommission im Juli 2011 vorgelegten Zwischenbericht über den Entwicklungsstand der Roamingdienste in der EU<sup>2</sup> geht hervor, dass die Mobilfunkanbieter in der EU ihre Roamingtarife zwar entsprechend den eingeführten EU-Preisobergrenzen gesenkt haben. Dennoch werden den Verbrauchern weiterhin keine Tarife angeboten, die wirklich deutlich unter den Höchstpreisen liegen. Dies führt die Kommission vor allem darauf zurück, dass sich der Wettbewerb auf dem Roamingmarkt nicht ausreichend entwickelt hat und strukturelle Probleme weiterhin fortbestehen.

### III. Der Vorschlag der Kommission für eine Neufassung der Roamingverordnung

Um für mehr Wettbewerb zu sorgen, schlägt die Kommission mit ihrem Regulierungsvorschlag einen zweigleisigen Ansatz vor. Zusätzlich zu den bereits bestehenden Preisobergrenzen sollen nun auch strukturelle Maßnahmen eingeführt geführt werden.

#### 1. Strukturelle Maßnahmen

Der Regulierungsvorschlag sieht zwei konkrete strukturelle Maßnahmen vor, mit deren Hilfe das ursächliche Problem des mangelnden Wettbewerbs auf dem EU-Roamingmarkt angegangen werden soll. Die Berichterstatterin begrüßt diesen neuen innovativen Ansatz, sieht jedoch Verbesserungspotenzial im Hinblick auf die vorgeschlagenen Umsetzungsvorhaben.

##### a) *Vorleistungsroamingzugang*

Alternativen Betreiber, die über kein eigenes Netz verfügen (z.B. Betreiber virtueller Mobilfunknetze – MVNO), soll der Eintritt in den Roamingmarkt erleichtert werden, indem

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<sup>1</sup> Verordnung (EG) Nr. 544/2009, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:167:0012:0023:DE:PDF>

<sup>2</sup> Europäische Kommission, „Zwischenbericht über den Entwicklungsstand der Roamingdienste in der EU“, Juni 2010, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0356:FIN:de:PDF>



ihnen die Netzanbieter in anderen Mitgliedstaaten Zugang zu ihren Netzen zu regulierten Vorleistungspreisen gewähren müssten (sogenannter "Vorleistungsroamingzugang"). Dies soll zu mehr Wettbewerb zwischen den Betreibern auf dem Roamingmarkt führen und damit mehr Anreize dafür schaffen, Kunden attraktivere Preise und Dienstleistungen anzubieten.

Damit allen alternativen Betreibern der Zugang zur Vorleistungsebene im gleichen Maße gewährleistet wird, sollte die Maßnahme zur Zugangsgewährung nach Ansicht der Berichterstatterin durch eine Verpflichtung zur Nicht-Diskriminierung ergänzt werden. Dadurch würde die Maßnahme mit den Vorkehrungen der Zugangsrichtlinie<sup>1</sup> aus dem Jahre 2002 in Einklang stehen. Die Verpflichtung zur Zugangsgewährung kann nur dann zum erwünschten Erfolg führen, wenn die Netzbetreiber dazu verpflichtet werden, sämtliche Anfragen alternativer Betreiber gleich zu behandeln.

#### *b) Separater Verkauf von Roamingdiensten*

Die zweite strukturelle Maßnahme betrifft die Endkundenebene: Kunden sollten künftig auch Roamingdienste von einem anderen Betreiber erwerben als von ihrem Anbieter inländischer Dienste. So könnten Kunden also einen von ihren nationalen Mobilfunkdiensten getrennten, günstigeren Roamingvertrag bei einem konkurrierenden Betreiber abschließen (sogenannter „separater Verkauf von Roamingdiensten“).

Grundsätzlich hält die Berichterstatterin diese Entkopplungsmaßnahme für zweckdienlich. Fraglich ist, inwieweit schon in der Verordnung die technische Umsetzung definiert werden sollte. Die Berichterstatterin ist der Auffassung, dass angesichts der heutigen rapiden technologischen Entwicklung das EU-Roamingprofil von BEREC in enger Zusammenarbeit mit der Kommission definiert werden sollte. In der Roaming-Verordnung sollten lediglich die Grundsätze formuliert werden, denen eine zukünftige technische Lösung entsprechen muss (z.B. Beibehaltung der Telefonnummer).

## 2. Preisobergrenzen

Bis die strukturellen Maßnahmen voll wirksam werden und der Wettbewerb zu günstigen Endkundenpreisen führt, soll durch den Regulierungsvorschlag schrittweise die Senkung der aktuellen Preisobergrenzen auf der Vorleistungs- und Endkundenebene für Sprach- und SMS-Dienste definiert sowie erstmals eine Obergrenze bei den Endkundenpreisen für mobile Datendienste eingeführt werden. Die Kommission schlägt vor, dass ab Juli 2014 Roamingkunden höchstens 24 EURcents pro Minute für einen ausgehenden Anruf, maximal 10 EURcents für einen eingehenden Anruf, maximal 10 EURcent für das Versenden von Textnachrichten und maximal 50 EURcent pro Megabyte für das Herunterladen von Daten und das Surfen im Internet im Ausland bezahlen sollen.

Die Berichterstatterin begrüßt, dass nun erstmals EU-weit auch die Preisobergrenzen auf der Endkundenebene für Datenroaming reguliert werden sollen. Bei Datenroamingdiensten war 2009 ein Zuwachs von mehr als 40 % zu verzeichnen.<sup>2</sup> Angesichts der Verbreitung von

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<sup>1</sup> Richtlinie 2002/19/EG, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:108:0007:0007:DE:PDF>

<sup>2</sup> Europäische Kommission, „Zwischenbericht über den Entwicklungsstand der Roamingdienste in der EU“, Juni 2010, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0356:FIN:de:PDF>

Smartphones und anderen Handgeräten dürfte dieser Trend anhalten. Eine Regulierung der Entgelte für das Herunterladen von Daten im Ausland ist daher dringend erforderlich.

Die Berichterstatterin ist jedoch der Meinung, dass die von der Kommission vorgeschlagenen Preisobergrenzen nicht ehrgeizig genug sind. Unabhängige Erhebungen zeigen, dass die tatsächlichen Kosten der Betreiber für die Erbringung von Roamingdiensten im europäischen Durchschnitt weit unter den vorgeschlagenen Obergrenzen auf der Vorleistungsebene liegen.<sup>1</sup> Insbesondere erachtet die Berichterstatterin die vorgeschlagenen Endkundenentgelte für Datenroamingdienste für extrem überhöht. Margen, die das Vier- bis Fünffache des Vorleistungspreises darstellen, sind nicht zu rechtfertigen.

Die Berichterstatterin befürwortet daher niedrigere Preisobergrenzen sowohl auf der Vorleistungs- als auch auf der Endkundenebene für Sprach-, SMS- und vor allem Datenroamingdienste. Gleichzeitig nimmt sie jedoch Rücksicht darauf, dass eine ausreichende Gewinnspanne für die Betreiber als Ausgleich für ihre Investitionen in den Netzausbau gewährleistet sein muss.

### 3. Maßnahmen zur Verbesserung von Transparenz und Verbraucherschutz

Die geltende Roamingverordnung enthält eine Reihe von Transparenzvorschriften, die zu einem angemessenen Verbraucherschutzniveau beigetragen haben. Zusätzlich zur Mitteilung der für Sprach-, SMS- und Datenroamingdienste geltenden Roamingtarife beim Eintritt in das Handynetz eines ausländischen Betreibers wurde beispielweise eine Sperre in der Weise eingeführt, dass die Nutzer beim Erreichen einer gewissen Kostenobergrenze beim Nutzen Ihrer mobilen Internetdienste erklären müssen, ob sie die Roamingdatendienste weiterhin in Anspruch nehmen wollen.

Zusätzlich zur Einführung der neuen strukturellen Maßnahmen, sind nach Auffassung der Berichterstatterin jedoch weitere Transparenzanstrengungen festzulegen. Zunächst bedarf es einfach verständlicher Informationen über die neuen Möglichkeiten und Tarife, die sich den Kunden aus der Entkopplungsmaßnahme eröffnen. Die Berichterstatterin setzt sich dafür ein, dass zukünftig Roamingverträge übersichtlich und unkompliziert gestaltet und verfasst werden müssen.

Im Hinblick auf die Warnung vor Rechnungsschocks sieht der Bericht vor, dass diese auch dann zu erfolgen hat, wenn Dienste außerhalb der EU in Anspruch genommen werden. Zusätzlich soll diese Warnung in Zukunft nicht nur die Kosten für das Datenroaming umfassen, sondern auch die Ausgaben für Sprach- und SMS-Dienste einbeziehen. Nicht zuletzt sollen nicht nur pre-paid Kunden, sondern auch post-paid Kunden in den Genuss dieser Warnungen kommen.

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<sup>1</sup> GEREK, „MTR Benchmark snapshot“, January/July 2011, [http://erg.eu.int/doc/berec/bor\\_11\\_27.pdf](http://erg.eu.int/doc/berec/bor_11_27.pdf) and [http://erg.eu.int/doc/berec/bor\\_11\\_35.pdf](http://erg.eu.int/doc/berec/bor_11_35.pdf)

