REPORT


Committee on Industry, Research and Energy

Rapporteur: Miapetra Kumpula-Natri
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

Amendments by Parliament set out in two columns

Deletions are indicated in bold italics in the left-hand column. Replacements are indicated in bold italics in both columns. New text is indicated in bold italics in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in bold italics. Deletions are indicated using either the ▌ symbol or strikeout. Replacements are indicated by highlighting the new text in bold italics and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.
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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION


(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2016)0399),
– having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0219/2016),
– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
– having regard to the opinion of the European and Social Committee of 19 October 20161,
– after consulting the Committee of the Regions,
– having regard to Rule 59 of its Rules of Procedure,
– having regard to the report of the Committee on Industry, Research and Energy (A8-0372/2016),

1. Adopts its position at first reading hereinafter set out;
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 3

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1 Not yet published in the Official Journal.

RR\1112017EN.docx 5/24 PE589.188v02-00
for Union-wide regulated roaming services in order to abolish retail roaming surcharges without distorting domestic and visited markets.

Amendment 2
Proposal for a regulation
Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) Regulation (EU) 2015/2120 provides for the possibility for a roaming provider to apply a ‘fair use policy’ in accordance with the implementing acts referred to in Article 6d of Regulation (EU) No 531/2012. An adequate fair use policy has a crucial role to play in order to guarantee a financially sustainable model of the wholesale and retail roaming markets. A generous fair use policy for roaming customers needs to be accompanied by wholesale caps which reflect the real costs of providing roaming services and that will enable as many operators as possible to provide ‘roam-like-at-home’ offers without incurring huge cost increases, damaging competitive domestic markets or increasing prices for domestic customers.

Amendment 3
Proposal for a regulation
Recital 4

Text proposed by the Commission

(4) The abolition of retail roaming surcharges introduced by Regulation (EU) No 2015/2120, also named "roam-like-at-home" (RLAH), is necessary to establish and ease the functioning of a digital single market across the Union. However, that
Regulation alone is not sufficient to ensure the correct functioning of the roaming market. **However, that regulation alone is not sufficient to ensure the correct and sustainable functioning of the roaming market. This Regulation should therefore ensure that pricing models in domestic markets are not affected by the abolition of retail roaming surcharges.**

**Amendment 4**

**Proposal for a regulation**

**Recital 5**

_text proposed by the Commission_

(5) The abolition of roaming surcharges as of 15 June 2017, as provided for in Regulation (EU) No 531/2012, is therefore subject to the applicability of any legislative act proposed by the Commission that provides for appropriate measures following its review of the wholesale roaming markets.

_text proposed by the Commission_

(5) The abolition of roaming surcharges as of 15 June 2017, as provided for in Regulation (EU) No 531/2012, is therefore subject to the applicability of any legislative act proposed by the Commission that provides for appropriate measures following its review of the wholesale roaming markets, _so as to make the abolition of retail roaming surcharges possible._

**Amendment 5**

**Proposal for a regulation**

**Recital 8**

_text proposed by the Commission_

(8) In particular, the current functioning of wholesale roaming markets could affect competition and investments in home operators’ domestic markets due to excessive wholesale roaming charges compared to the domestic retail prices applied to end-users. This applies in particular for smaller or net out-bound operators, thus making RLAH structurally unsustainable.

_text proposed by the Commission_

(8) In particular, the current functioning of wholesale roaming markets could affect competition and investments in home operators' domestic markets due to excessive wholesale roaming charges compared to the domestic retail prices applied to end-users. This applies in particular to smaller _operators including mobile virtual network operators (MVNOs), which are essential for healthy competition, and to net out-bound operators, thus making RLAH structurally unsustainable._ _It is also crucial to ensure_

Amendment 6

Proposal for a regulation
Recital 9

Text proposed by the Commission

(9) The functioning of the wholesale roaming market should allow that operators recover all costs of providing regulated wholesale roaming services, including joint and common costs. This should preserve incentives to invest in visited networks and avoid any distortion of domestic competition in the visited markets caused by regulatory arbitrage by operators using wholesale roaming access remedies to compete in domestic visited markets.

Amendment

(9) The functioning of the wholesale roaming market should allow that operators recover all efficiently incurred costs of providing regulated wholesale roaming services, including joint and common costs. This should preserve incentives to invest in visited networks and avoid any distortion of domestic competition in the visited markets caused by regulatory arbitrage by operators using wholesale roaming access remedies to compete in domestic visited markets.

Amendment 7

Proposal for a regulation
Recital 11 a (new)

Text proposed by the Commission

(11 a) In order to facilitate the proper functioning of the internal market for wholesale roaming services, mobile network operators should be able to refuse requests for wholesale roaming access only on the basis of objective criteria and after obtaining authorisation from their national regulatory authority. Undertakings whose requests for wholesale roaming access are refused should be able to submit complaints to the national regulatory authorities. In the interests of transparency, the national
regulatory authority should inform the Commission of such applications for authorisation and any complaints submitted. The Commission should make information concerning such applications and complaints available to the public, subject to the duty of confidentiality.

Amendment 8
Proposal for a regulation
Recital 12

Text proposed by the Commission

(12) With regard to rules on wholesale charges, regulatory obligations at Union level should be maintained since any measure that enables RLAH across the Union without addressing the level of the wholesale costs associated with providing these services could risk disrupting the internal market for roaming services and would not encourage more competition.

Amendment

(12) With regard to rules on wholesale charges, regulatory obligations at Union level should be maintained since any measure that enables RLAH across the Union without addressing the level of the wholesale costs associated with providing these services could risk disrupting the internal market for roaming services and would not encourage more competition. *Competition is necessary for the telecommunications market, in particular for new entrants, technologically innovative service models, small and medium-sized enterprises and start-ups, taking into consideration, the need to promote the necessary network infrastructure investment to meet the growth in the usage of data services, to which the introduction of RLAH will contribute;*

Amendment 9
Proposal for a regulation
Recital 16

Text proposed by the Commission

(16) In setting the maximum wholesale charge for regulated data roaming services, all the access components needed to enable the provision of roaming services have

Amendment

(16) *Usage of data services is growing rapidly in the Union and across the world. The introduction of RLAH from 15 June 2017 will contribute to that growth in the*
been taken into account, including the transit costs of delivering data traffic to an exchange point identified by the home network operator. 

roaming context, leading to the cost per unit of data consumed being driven down significantly. In order to take account of the increase in usage of data services and reduction in cost per unit of data consumed, the maximum wholesale charge for regulated data roaming services should decrease each year. In setting the maximum wholesale charge for regulated data roaming services, all the access components needed to enable the provision of roaming services have been taken into account, including the transit costs of delivering data traffic to an exchange point identified by the home network operator.

**Amendment 10**

**Proposal for a regulation**

**Recital 18**

*Text proposed by the Commission*

(18) Therefore, the existing maximum wholesale roaming charges for voice calls, SMS and data services should be lowered.

*Amendment*

(18) Therefore, the existing maximum wholesale roaming charges for voice calls, SMS and data services should be lowered substantially, to levels closer to the actual cost of providing those services.

**Amendment 11**

**Proposal for a regulation**

**Recital 21**

*Text proposed by the Commission*

(21) It is necessary to monitor and regularly review the functioning of wholesale roaming markets and their interrelationship with the retail roaming market, taking into account competitive and technological developments and traffic flows. In order to properly assess how roaming markets will adapt to RLAH rules, sufficient data should be gathered on functioning of these markets after the

*Amendment*

(21) It is necessary to monitor and regularly review the functioning of wholesale roaming markets and their interrelationship with the retail roaming market, taking into account competitive and technological developments and traffic flows. To that end, the Commission should, by 15 December 2018, submit an interim report to the European Parliament and to the Council, based on
implementation of these rules. The Commission should subsequently submit reports to the European Parliament and to the Council every two years. The first such report should be submitted by 15 December 2019. In its biennial report, the Commission should, in particular, assess whether RLAH has any impact on the evolution of retail prices and, in particular, the range of tariff plans available on the retail market. This should include, on the one hand, an assessment of any emergence of tariff plans that only include domestic services and that exclude retail roaming services altogether, thus undermining the very objective of RLAH and, on the other, an assessment of any reduction in the availability of flat-rate tariff plans, which could also represent a loss for consumers and undermine the objectives of the digital single market. As in its Report on the Review of the Wholesale Roaming Market of 15 June 2016, the Commission’s biennial reports should assess the ability of visited network operators to recover efficiently incurred costs of providing regulated wholesale roaming services, and the impact of RLAH on planned investments in network infrastructure. In addition, the Commission should assess the ability of home network operators to recover the costs of providing regulated roaming services from their revenues from the provision of such services, in particular the impact on MVNOs, and the extent to which retail roaming surcharges have been authorised by national regulatory authorities under the sustainability mechanism. In order to properly assess how roaming markets will adapt to RLAH rules, sufficient data should be gathered on functioning of these markets after the implementation of these rules.
Amendment 12
Proposal for a regulation
Recital 22

Text proposed by the Commission

In order to assess the competitive developments in Union-wide roaming markets and to report regularly on changes in actual wholesale roaming charges for unbalanced traffic between roaming providers, BEREC should be given the task of collecting data from national regulatory authorities on the actual charges applied for balanced and unbalanced traffic respectively. It should also collect data on cases where parties to a wholesale agreement have opted out from the application of maximum wholesale roaming charges or have implemented measures at wholesale level that are aimed at preventing permanent roaming or anomalous or abusive use of wholesale roaming access for purposes other than the provision of regulated roaming services to roaming providers’ customers while the latter are periodically travelling within the Union.

Amendment

In order to assess the competitive developments in Union-wide roaming markets and to report regularly on changes in actual wholesale roaming charges for unbalanced traffic between roaming providers, BEREC should be given the task of collecting data from national regulatory authorities on the actual charges applied for balanced and unbalanced traffic respectively. It should also collect data on cases where parties to a wholesale agreement have opted out from the application of maximum wholesale roaming charges or have implemented measures at wholesale level that are aimed at preventing permanent roaming or anomalous or abusive use of wholesale roaming access for purposes other than the provision of regulated roaming services to roaming providers' customers while the latter are periodically travelling within the Union. On the basis of the data collected, BEREC should report regularly on the relationship between retail prices, wholesale charges and wholesale costs for domestic and roaming services.

Amendment 13
Proposal for a regulation
Article 1 – point -1 (new)

Regulation (EU) No 531/2012
Article 3 – paragraph 2

Present text

"2. Mobile network operators may refuse requests for wholesale roaming access only on the basis of objective

Amendment

In Article 3, paragraph 2 is replaced by the following:

"2. Mobile network operators may refuse requests for wholesale roaming access only on the basis of objective
criteria and after obtaining authorisation from their national regulatory authority. The national regulatory authority concerned shall inform the Commission of any application for authorisation and of the objectively justified reasons therefor. The Commission shall make information concerning such applications available to the public, subject to the duty of confidentiality."

Amendment 14
Proposal for a regulation
Article 1 – point 1 a (new)
Regulation (EU) No 531/2012
Article 3 – paragraph 6

Present text

"6. The reference offer referred to in paragraph 5 shall be sufficiently detailed and shall include all components necessary for wholesale roaming access as referred to in paragraph 3, providing a description of the offerings relevant for direct wholesale roaming access and wholesale roaming resale access, and the associated terms and conditions. That reference offer may include conditions to prevent permanent roaming or anomalous or abusive use of wholesale roaming access for purposes other than the provision of regulated roaming services to roaming providers’ customers while the latter are periodically travelling within the Union. If necessary, national regulatory authorities shall impose changes to reference offers to give effect to obligations laid down in this Article."

Amendment

(1 a) In Article 3, paragraph 6 is replaced by the following:

"6. The reference offer referred to in paragraph 5 shall be sufficiently detailed and shall include all components necessary for wholesale roaming access as referred to in paragraph 3, providing a description of the offerings relevant for direct wholesale roaming access and wholesale roaming resale access, and the associated terms and conditions. That reference offer may include conditions to prevent permanent roaming or anomalous or abusive use of wholesale roaming access for purposes other than the provision of regulated roaming services to roaming providers’ customers while the latter are periodically travelling within the Union. If necessary, national regulatory authorities shall impose changes to reference offers to give effect to obligations laid down in this Article. Undertakings that have requested wholesale roaming access may submit complaints to the national regulatory authorities concerned. The national regulatory authorities shall accept or reject such complaints within one month
of receipt, providing reasons for their decision. The national regulatory authorities shall inform the Commission of such complaints and the corresponding decisions, and the Commission shall make them available to the public."

Amendment 15

Proposal for a regulation
Article 1 – point 2
Regulation (EU) No 531/2012
Article 7 – paragraph 1

Text proposed by the Commission

1. The average wholesale charge that the visited network operator may levy on the roaming provider for the provision of a regulated roaming call originating on that visited network, inclusive, among others, of origination, transit and termination costs, shall not exceed a safeguard limit of EUR 0.04 per minute as of 15 June 2017 and shall, without prejudice to Article 19, remain at EUR 0.04 until 30 June 2022.

Amendment

1. The average wholesale charge that the visited network operator may levy on the roaming provider for the provision of a regulated roaming call originating on that visited network, inclusive, among others, of origination, transit and termination costs, shall not exceed a safeguard limit of EUR 0.03 per minute as of 15 June 2017 and shall, without prejudice to Article 19, remain at EUR 0.03 until 30 June 2022.

Amendment 16

Proposal for a regulation
Article 1 – point 4
Regulation (EU) No 531/2012
Article 12 – paragraph 1

Text proposed by the Commission

1. With effect from 15 June 2017, the average wholesale charge that the visited network operator may levy on the roaming provider for the provision of regulated data roaming services by means of that visited network shall not exceed a safeguard limit of EUR 0.0085 per megabyte of data transmitted and shall, without prejudice to Article 19, remain at EUR 0.0085 per megabyte of data transmitted until 30 June.

Amendment

1. With effect from 15 June 2017, the average wholesale charge that the visited network operator may levy on the roaming provider for the provision of regulated data roaming services by means of that visited network shall not exceed a safeguard limit of EUR 4 per gigabyte of data transmitted. The safeguard limit shall, on 1 July 2018, decrease to EUR 3 per gigabyte of data transmitted, on 1 July 2019 to EUR 2 per gigabyte of data transmitted, and, without
Amendment 17

Proposal for a regulation
Article 1 – point 4 a (new)
Regulation (EU) No 531/2012
Article 16 – paragraphs 1 and 2

Present text

"1. National regulatory authorities shall monitor and supervise compliance with this Regulation within their territory.

National regulatory authorities shall strictly monitor and supervise roaming providers availing themselves of Article 6b, 6c and 6e(3).

2. National regulatory authorities shall make up-to-date information on the application of this Regulation, in particular Articles 6a, 6b, 6c, 6e, 7, 9, and 12 publicly available in a manner that enables interested parties to have easy access to it."

Amendment

(4 a) In Article 16, paragraphs 1 and 2 are replaced by the following:

"1. National regulatory authorities shall, together with BEREC, monitor and supervise compliance with this Regulation within their respective territory.

National regulatory authorities shall strictly monitor and supervise roaming providers availing themselves of Article 6b, 6c and 6e(3).

2. National regulatory authorities and BEREC shall make up-to-date information on the application of this Regulation, in particular Articles 6a, 6b, 6c, 6e, 7, 9, and 12 publicly available in a manner that enables interested parties to have easy access to it."

Amendment 18

Proposal for a regulation
Article 1 – point 5
Regulation (EU) No 531/2012
Article 17 – paragraph 1

Text proposed by the Commission

(5) In Article 17 (1) the following subparagraph is added:

"1. In the event of a dispute in connection with the obligations laid down

Amendment

(5) In Article 17, paragraph 1 is replaced by the following:

"1. In the event of a dispute in connection with the obligations laid down
in this Regulation between undertakings providing electronic communications networks or services in a Member State, the dispute resolution procedures laid down in Articles 20 and 21 of the Framework Directive shall apply.

Disputes between visited network operators and other operators on rates applied to inputs necessary for the provision of regulated wholesale roaming services may be referred to the competent national regulatory authority or authorities pursuant to Article 20 or 21 of the Framework Directive. In such a case, the competent national regulatory authority or authorities shall consult BEREC, about the action to be taken in accordance with the provisions of the Framework Directive, the Specific Directives or this Regulation to resolve the dispute, and shall await BEREC's opinion before taking action to resolve the dispute."

(a) rates applied to inputs necessary for the provision of regulated wholesale roaming services;

(b) instances of unfair competition consisting in substance of an offer from a non-domestic operator based on permanent roaming

may be referred to the competent national regulatory authority or authorities pursuant to Article 20 or 21 of the Framework Directive. In such a case, the competent national regulatory authority or authorities shall consult BEREC, about the action to be taken in accordance with the provisions of the Framework Directive, the Specific Directives or this Regulation to resolve the dispute, and shall await BEREC's opinion before taking action to resolve the dispute.

If the dispute falls under (b), BEREC shall, in its opinion, make an overall assessment over a significant period of all factual elements characterising the activities carried out by the non-domestic operator in the Member State in which it is established and, on a proportional and
comparative basis, in the Member State visited. Such elements may include:

(a) the place where the operator has its registered office and administration, or where the operator has offices, pays taxes and social security contributions;

(b) the law applicable to contracts concluded by the operator with its staff, on the one hand, and with its customers on the other;

(c) the place where the operator performs its substantial business activity and where it employs administrative staff;

(d) the investments made, the number of contracts performed and/or the proportion of the turnover realised in the Member State of establishment and in the visited Member State."

Amendment 19

Proposal for a regulation

Article 1 – point 6 – point a

Regulation (EU) No 531/2012

Article 19 – paragraph 3

Text proposed by the Commission

(a) in paragraph 3 the first sentence is replaced by the following:

"3. In addition, the Commission shall submit a report to the European Parliament and the Council every two years after 15 June 2017. Each report shall include, inter alia, an assessment of:

Amendment

(a) paragraph 3 is replaced by the following:

"3. In addition, the Commission shall submit an interim report on the implementation of the abolition of retail roaming surcharges to the European Parliament and the Council by 15 December 2018. Furthermore, and after consulting BEREC, the Commission shall submit a report to the European Parliament and to the Council by 15 December 2019 and every two years thereafter, accompanied, if appropriate, by a legislative proposal to amend the wholesale charges for regulated roaming services laid down in this Regulation. Those biennial reports shall include, inter
(a) the availability and quality of services, including those which are an alternative to regulated retail voice, SMS and data roaming services, in particular in the light of technological developments;

(b) the degree of competition in both the retail and wholesale roaming markets, in particular the competitive situation of small, independent or newly started operators, including the competition effects of commercial agreements and the degree of interconnection between operators;

(c) the extent to which the implementation of the structural measures provided for in Articles 3 and 4 has produced results in the development of competition in the internal market for regulated roaming services.

(alia, an assessment of:

(a) the availability and quality of services, including those which are an alternative to regulated retail voice, SMS and data roaming services, in particular in the light of technological developments;

(b) the degree of competition in both the retail and wholesale roaming markets, in particular the competitive situation of small, independent or newly started operators, and MVNOs, including the competition effects of commercial agreements and the degree of interconnection between operators;

(c) the extent to which the implementation of the structural measures provided for in Articles 3 and 4 has produced results in the development of competition in the internal market for regulated roaming services.

(ca) the evolution of retail prices, the range of tariff plans available to customers, including any emergence of tariff plans restricted to domestic services only, and any reduction in the availability of flat-rate tariff plans;

(cb) changes in data usage patterns by consumers;

(cc) the ability of home network operators to sustain their domestic charging model and to recover the costs of providing regulated roaming services from the revenues from the provision of such services, and the extent to which exceptional retail roaming surcharges have been authorised pursuant to Article 6c;

(cd) the ability of visited network operators to recover the efficiently incurred costs of providing regulated wholesale roaming services:

(ce) the impact of RLAH on planned investments in network infrastructure by operators;

(cf) the impact of Commission
Implementing Regulation (EU) .../... on consumer protection, in particular in relation to dispute settlements between operators applying a fair use policy and roaming customers, such as whether the latter are granted sufficient time to object and avoid being penalised in the process;

(cg) the use of objective indicators and in particular the interpretation by operators and national regulatory authorities of the terminology used in Implementing Regulation (EU) .../..., such as 'anomalous use', and 'periodic travelling', with a view to avoiding inconsistencies between Member States in application;

________________________________________________________________________

1a Commission Implementing Regulation (EU) .../... of ... laying down detailed rules on the application of fair use policy and on the methodology for assessing the sustainability of the abolition of retail roaming surcharges and on the application to be submitted by a roaming provider for the purposes of that assessment (OJ L..., ...,p...).

Amendment 20

Proposal for a regulation Article 1 – point 6 – point b
Regulation (EU) No 531/2012 Article 19 – paragraph 4

Text proposed by the Commission

(b) in paragraph 4 first subparagraph, the first sentence is replaced by the following:

"4. In order to assess competitive developments in the Union-wide roaming markets, BEREC shall regularly collect data from national regulatory authorities on developments in retail and wholesale charges for regulated voice, SMS and data

Amendment

(b) paragraph 4 is replaced by the following:

"4. In order to assess competitive developments in the Union-wide roaming markets, BEREC shall regularly collect, and make publicly available, data from national regulatory authorities on developments in retail and wholesale
roaming services, including wholesale charges applied for balanced and unbalanced roaming traffic respectively. It shall also collect data on the wholesale agreements not subject to the maximum wholesale roaming charges provided in Articles 7, 9 or 12 and on the implementation of contractual measures at wholesale level aimed at preventing permanent roaming or anomalous or abusive use of wholesale roaming access for purposes other than the provision of regulated roaming services to roaming providers’ customers while the latter are periodically travelling within the Union.

Those data shall be notified to the Commission at least twice a year. The Commission shall make them public."

On the basis of collected data, BEREC shall also report regularly on the evolution of pricing and consumption patterns in the Member States both for domestic and roaming services and the evolution of actual wholesale roaming rates for unbalanced traffic between roaming providers.

BEREC shall also annually collect information from national regulatory authorities on transparency and comparability of different tariffs offered by operators to their customers. The Commission shall make those data and findings public."
EXPLANATORY STATEMENT

Introduction

Regulation (EU) 2015/2120, the Telecoms Single Market ("TSM") Regulation, adopted in 2015 provided for the abolition of retail roaming charges on voice calls, data and SMS as of 15 June 2017: so-called Roam Like at Home (RLAH). For RLAH to come into effect, legislation adapting the prices caps for wholesale roaming services has to be applicable by that date. As requested by the co-legislators, the Commission conducted a review of the wholesale roaming market and based on that review proposed the legislation. This report is the first step towards adoption of that legislation in accordance with the ordinary legislative procedure.

RLAH is also subject to the possible application of ‘fair use policies’ by operators and exceptional derogations through a sustainability mechanism, due to be further elaborated and presented by the Commission in an Implementing Act by the end of the year. The Rapporteur wishes to underline that the implementing act goes hand in hand with the review on the wholesale caps. A generous fair use policy for consumers needs to be accompanied by wholesale caps that enable as many operators as possible to provide Roam Like At Home.

In its review, the Commission concluded that the wholesale roaming market is not functioning well and proposed to further lower the wholesale price caps on voice calls, SMS and data roaming.

Your Rapporteur fully endorses the objective of abolishing retail roaming charges in Europe and proposes further changes to the Commission proposal that would benefit the consumer and safeguard competitive telecoms markets.

Wholesale caps

The wholesale prices for data have decreased on the markets for years and there is no reason to believe that this development would not continue. The decreasing prices are very much linked to the rapidly growing usage of data all over the world. By 2021, according to some estimates, mobile data traffic will have increased tenfold compared to 2015. The economic benefits of increased data usage in European societies are clear, bringing with it new service opportunities and boosting industrial competitiveness. It should not be discouraged by any means.

Increased data usage will also drive new investments into infrastructure, enabling both domestic and visiting consumers to use even more data. The initial figures from operators already offering RLAH to their customers show a steep growth in data usage. Those consumers who still keep their mobiles switched off when they are travelling in the European Union, will be free to use data-based services once RLAH becomes a reality for all, further boosting data usage.

The Commission does not adequately take these developments into account, basing its proposal for the wholesale price cap for data on a conservative assumption of the
increase in data usage and non-evolving market price level. This assumption has led the Commission to propose a wholesale cap that your Rapporteur believes is too high. The Commission proposal sets an unchanged price cap for data to 0,85€c from 2017 to 2021 (with a review in 2019). However, in the calculations by TERA Consultants, accompanying the Commission’s impact assessment, the cost of offering roaming wholesale services to an operator in 2017 is below 0,5 €c per MB in every Member States and below 0,4 €c per MB in 27 out of 28 Member States (with the exception of Malta).

The TERA study also demonstrates that higher usage will significantly drive down the cost per unit. To better reflect these realities on the data market, the Rapporteur considers that it is necessary to set the price cap for 2017 closer to the cost levels and to introduce an annually decreasing price cap for data. This glide path proposed by the Rapporteur in Article 12 reflects the reality in the wholesale markets, but also brings further predictability. Operators make roaming agreements with each other annually. The glide path makes it possible for the operators to better predict their roaming fees than a static price cap combined with a review whose outcome cannot be predicted.

Furthermore, the Rapporteur considers that too high price caps will lead to decreased competition in the markets. The smaller operators and the mobile virtual operators are innovators, competitors and can bring more clients to the home networks as well as roaming networks. However, they have lower bargaining power and the prices they pay for wholesale data roaming are usually on, or just below the regulated price cap. Imposing a price cap that is too high will bring economic difficulties for smaller and virtual operators, leave fewer actors and less competition on markets, thus limiting consumer choice. Too high price caps might also lead to operators opting to offer only domestic deals to their customers, which is against the rational of the Digital Single Market.

Moreover, if a generous fair use policy is accompanied by wholesale price caps for data that are too high, this will have a negative impact on those markets where data usage is high and/or retail prices low. This scenario might force visiting operators to apply for a derogation from RLAH through the sustainability mechanism, meaning that their customers no longer benefit from RLAH.

The Rapporteur also proposes to change the units used for data from megabytes to gigabytes (1024 MB), which takes better account of the fast-rising data usage that is currently observed and is expected in the coming years. The Rapporteur believes the unit is more suitable for new amounts of data consumption and makes the regulation more future-proof.

Finally, compared to the Commission proposal, the Rapporteur finds that there would still be room for both competition and cost recovery even with a lowered wholesale cap also for voice calls. The Rapporteur however considers the price cap for SMS to be adequate. The cap is well founded on the market realities as the use of text messages has been in decline and slowly replaced by competing data-based services.
Review clause

The Commission proposes a review of price caps every two years after 15 June 2017. The Rapporteur agrees with this, in combination with the proposed glide path. If it is demonstrated that price caps are set too high and disrupt the functioning of markets, destroy market actors and harm competition or that caps are set too low and endanger cost recovery for visited operators, the price caps can be adjusted accordingly.
### Title
Rules for wholesale roaming markets

### References

### Date submitted to Parliament
15.6.2016

### Committee responsible
- **ITRE** 4.7.2016

### Committees asked for opinions
- **IMCO** 4.7.2016

### Not delivering opinions
- **IMCO** 13.7.2016

### Rapporteurs
- **Miapetra Kumpula-Natri** 6.7.2016

### Discussed in committee
- 5.9.2016
- 12.10.2016

### Date adopted
29.11.2016

### Result of final vote
+ 54
-- 5
0 1

### Members present for the final vote

### Substitutes present for the final vote
- Pilar Ayuso, Michał Boni, Ian Duncan, Werner Langen, Olle Ludvigsson, Marian-Jean Marinescu, Clare Moody, Luděk Niedermayer, Jens Rohde, Massimiliano Salini

### Substitutes under Rule 200(2) present for the final vote
- Daniela Aiuto

### Date tabled