



**COUNCIL OF
THE EUROPEAN UNION**

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2011/0187 (COD)**

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NOTE

from: Council Secretariat
to: Delegations

No. Cion prop.: 12639/1/11 REV 1 TELECOM 99 COMPET 352 MI 355 CONSOM 116
CODEC 1182

Subject: Proposal for a Regulation of the European Parliament and of the Council on
roaming on public mobile communications networks within the Union (Recast)

Delegations will find in Annex for information the opinion from the Legal Services of the European Parliament, the Council and the Commission on the recasting technique regarding the Proposal for a Regulation of the European Parliament and of the Council on roaming on public mobile communications networks within the Union.



GROUPE CONSULTATIF
DES SERVICES JURIDIQUES

Brussels, 14 OCT. 2011

OPINION

FOR THE ATTENTION OF THE EUROPEAN PARLIAMENT
 THE COUNCIL
 THE COMMISSION

**Proposal for a regulation of the European Parliament and of the Council on roaming on public mobile communications networks within the Union
COM(2011) 402 final/2 of 11.7.2011 - 2011/0187 (COD)**

Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 21 September 2011 for the purpose of examining, among others, the aforementioned proposal submitted by the Commission.

At that meeting¹, an examination of the proposal for a regulation of the European Parliament and of the Council recasting Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community resulted in the Consultative Working Party's establishing, by common accord, as follows.

1) The recast proposal was not accompanied by an explanatory memorandum. Therefore, the requirements laid down in point 6(a) of the Inter-institutional Agreement with regard to the contents of the explanatory memorandum accompanying a proposal for recasting were not complied with.

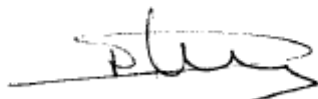
2) The following changes proposed in the recast text should have been identified by using the grey-shaded type generally used for marking substantive changes:

- in recital 2, the replacement of the words "*not such as*" with the words "*far from what*";
- in recital 10, the deletion of the words "*renewed Lisbon Strategy's*";
- in recital 11, the deletion of the words "*achieving a high level of consumer protection whilst improving the conditions for the functioning of*";
- in recital 14, the deletion of the words "*achieving a high level of consumer protection while safeguarding*";

¹ The Consultative Working Party had at its disposal the English, French and German language versions of the proposal and worked on the basis of the English version, being the master-copy language version of the text under discussion.

- in Article 1(1), the deletion of the words "*where appropriate*";
 - in Article 1(4), the deletion of the words "*Article 6a(3) and (4)*";
 - in Article 6(2), the deletions of the indications "0,22", "0,18", "2010" and "2011".
- 3) The wording of recital 5, corresponding to recital 4 of Regulation (EC) No 717/2007, should be adapted so as to read as follows: "*Regulation (EC) No 717/2007 was not an isolated measure, but complemented and supported, insofar as Union-wide roaming is concerned, the rules provided for by the 2002 regulatory framework for electronic communications. That framework has not provided national regulatory authorities with sufficient tools to take effective and decisive action with regard to the pricing of roaming services within the Union and thus failed to ensure the smooth functioning of the internal market for roaming services. Regulation (EC) No 717/2007 was an appropriate means of correcting this situation*".
- 4) In recital 10, the proposed deletion of the indication of the year 2004, which is contained in the title of a document referred to in that recital, cannot be considered correct. It would be necessary to maintain the existing reference to "*the European Parliament resolution on European electronic communications regulation and markets 2004*".
- 5) The first subparagraph of Article 6(3) contains a provision which has now become obsolete. Therefore, that subparagraph should be removed from the draft recast text of the regulation.
- 6) In the title of Annex I, the reference made to "*Article 22*" should be replaced by a reference to "*Article 21*".

In consequence, examination of the proposal has enabled the Consultative Working Party to conclude, without dissent, that the proposal does not comprise any substantive amendments other than those identified as such therein or in the present opinion. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing legal text, without any change in its substance.



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