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#### **NOTE**

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From:	Permanent Representatives Committee (Part 1)
To:	Council
No. prev. doc.:	14221/16 TELECOM 224 COMPET 568 MI 692 CONSOM 271 CODEC 1610
No. Cion doc.:	10329/16 TELECOM 121 COMPET 381 MI 458 CONSOM 154 CODEC 898 + ADD1 + ADD2
Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 531/2012 as regards rules for wholesale roaming markets - General approach

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#### **INTRODUCTION**

1. On 15 June 2016, the Commission adopted and transmitted to the Council and to the European Parliament the above-mentioned proposal which regulates the wholesale roaming markets, in view of the introduction on 15 June 2017 of the roam-like-at-home (RLAH) principle foreseen by Regulation (EU) 2015/2120. This initiative should ensure that the level of wholesale roaming charges enables the sustainable provision of RLAH in the Union without distorting the domestic visited and home markets.

2. Following a consultation process with European stakeholders and a comprehensive review of the wholesale roaming market in the Union, including an external study to estimate the cost of providing wholesale roaming services, the Commission analysed the qualitative and quantitative data received on wholesale and retail roaming markets.
3. The Commission proposal is accompanied by an impact assessment which analyses four different policy options. The preferred option chosen by the Commission provides for lower EU-wide wholesale roaming charges.
4. The Commission's proposal contains 5 main elements:
  - the possibility for parties in a wholesale agreement to explicitly agree that the maximum regulated wholesale roaming charge should not apply to their agreement, for a defined period of time;
  - a new safeguard limit for the average wholesale charge for the provision of regulated roaming calls originating on a visited network of EUR 0.04 per minute from 15 June 2017 to 30 June 2022;
  - a new safeguard limit for the average wholesale charge for the provision of regulated roaming SMS message originating on a visited network of EUR 0.01 per SMS message from 15 June 2017 to 30 June 2022;
  - a new safeguard limit for the average wholesale charge for the provision of regulated roaming data services by means of a visited network of EUR 0.0085 per megabyte of data transmitted from 15 June 2017 to 30 June 2022;
  - a proposal for a report every two years after 15 June 2017.
5. As foreseen by Regulation (EU) 2015/2120, a draft implementing act on the Fair Use Policy and Sustainability mechanism at retail level was prepared by the Commission. In September, the Commission published and withdrew a first draft version, quickly followed by a second draft that proposed a Fair Use Policy without explicit volume or duration limits.

## **WORK WITHIN THE COUNCIL PREPARATORY BODIES**

6. The Commission presented this proposal and its impact assessment (IA) to the Working Party on Telecommunication and Information Society (hereinafter referred to as the "Working Party") on 17 June 2016, followed by an examination of the impact assessment in the Working Party on 22 and 30 June. Delegations raised several points on the Impact Assessment, in particular:
- the size and complexity of the Impact Assessment;
  - the limited explanations provided for the rejection of Options 1 (no action), 2 (current caps) and particularly Option 4 (country-specific, cost-oriented caps);
  - explanations lacking clarity on how the Commission decided on the caps to propose under Option 3, in particular for the data roaming cap which is the most controversial;
  - the weaknesses of the cost model developed by TERA Consultants which was used as one of the significant inputs for the Commission's proposal.
7. However, in general, delegations welcomed the proposal in the context of the introduction of the RLAH principle by 15 June 2017.

## **OUTSTANDING ISSUES**

8. Throughout the months of July-November 2016, the Working Party examined, on several occasions, the Commission's proposal and alternative Presidency compromise proposals. The discussion at the level of the Working Party revealed diverging views among Member States, in particular on the cap for roaming data services, and on the need for a sustainability mechanism at wholesale level.

9. The divergence stems mostly from the major differences in the national retail markets, and from the very different international travelling patterns observed in each Member State. The national positions were also reinforced by the absence of explicit limits proposed in the draft implementing act.
10. Despite the intensive work at Working Party level to find an acceptable compromise solution to accommodate the very different situations in the Member States, guidance had to be requested from COREPER. This guidance was obtained with much difficulty on 26 October 2016.
11. Based on that guidance, the Presidency proposed a complete and updated text in the Working Party on 9 November 2016<sup>1</sup> in view of reaching a general approach in the TTE Council of 2 December 2016.
12. The outcome of the discussions held on 9 November 2016 was submitted to COREPER in document 14221/16. COREPER discussed it on 16 November 2016 and agreed to forward the new compromise proposal as the basis for a general approach by the TTE Council during its meeting of 2 December, in view of starting negotiations with the European Parliament. During the COREPER meeting, the Danish delegation, supported by a number of delegations, announced that it would enter a statement for the minutes of the Council. The final statement, as well the list of all delegations supporting it, would feature in the minutes of the Council.
13. The text supported by the COREPER is presented in Annex. This text is the same as the annex of document 14221/16, with prices for data roaming services expressed in EUR per megabyte. Changes compared to the Commission proposal are marked in bold or strikethrough.

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<sup>1</sup> Doc. 13754/16

## CONCLUSION

14. **This proposal for a general approach constitutes a difficult compromise which, in principle, should be supported by the Ministers to begin negotiations with the European Parliament.**
  15. In the light of the above, the Council is invited to adopt during its meeting on 2 December 2016 a General Approach on the basis of the Presidency compromise text as set out in the Annex to this Note.
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2016/0185 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**amending Regulation (EU) No 531/2012 as regards rules for wholesale roaming markets**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,<sup>2</sup>~~After consulting the Committee of the Regions,<sup>3</sup>~~

Acting in accordance with the ordinary legislative procedure,

Whereas:

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<sup>2</sup> OJ C , , p. .<sup>3</sup> ~~OJ C , , p. .~~

- (1) Regulation (EU) No 531/2012 of the European Parliament and the Council<sup>4</sup> introduces a common approach to the regulation of roaming on public communications networks within the Union.
- (2) The Digital Single Market Strategy set out by the Commission on 6 May 2015<sup>5</sup> considered the Telecom Single Market package, adopted by Regulation (EU) 2015/2120 of the European Parliament and of the Council<sup>6</sup>, a first step towards eliminating retail roaming surcharges, thereby supporting the establishment of a digital single market in the Union.
- (3) Regulation (EU) 2015/2120 establishes a new retail pricing mechanism for Union-wide regulated roaming services in order to abolish retail roaming surcharges without distorting domestic and visited markets.
- (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.
- (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.

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<sup>4</sup> Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union, OJ L 172, 30.6.2012, p. 10.

<sup>5</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — A Digital Single Market Strategy for Europe, COM(2015) 192.

<sup>6</sup> Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union, OJ L 310, 26.11.2015, p. 1.

- (6) The Commission has conducted a comprehensive review of wholesale roaming markets to assess which measures are necessary to enable retail roaming surcharges to be abolished by 15 June 2017.
- (7) In light of the findings of the review, the Commission adopted its report on the review of the wholesale roaming market<sup>7</sup>. In this regard, in order to ensure that retail roaming services can be provided at domestic retail prices, wholesale roaming inputs must be available at a level that allows home operators to provide RLAH. Although having fully competitive national wholesale roaming markets in which prices are in line with visited networks' underlying costs of provision would clearly make RLAH more sustainable, the review shows that this is not the case. The review also demonstrated that the future retail RLAH obligation alone is highly unlikely to lead to well-functioning wholesale roaming markets that would enable the provision of RLAH in the Union by 15 June 2017.
- (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.
- (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.
- (10) In light of the problems identified, current measures applicable on the wholesale roaming markets should be amended to ensure that the level of wholesale roaming charges enables the sustainable provision of RLAH in the Union.

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<sup>7</sup> Report from the Commission to the European Parliament and the Council on the review of the wholesale roaming market [final reference]



(11) In order to allow for the development of a more efficient, integrated and competitive market for roaming services, when negotiating wholesale access for the purpose of providing retail roaming services, operators should be given the alternative to negotiate innovative wholesale pricing schemes which are not directly linked to actual consumed volumes, such as flat payments, up-front commitments or capacity-based contracts, or pricing schemes that reflect variations of demand across the year. Therefore, the negotiating parties should have the option of agreeing not to apply maximum regulated wholesale roaming charges for the duration of the wholesale roaming agreements or any other pre-defined periods of time. This would exclude the possibility for either party to subsequently request the application of the volume-based maximum wholesale roaming charges based on actual consumption set in Regulation (EU) No 531/2012. This alternative is without prejudice to the obligations as regards the provision of regulated retail roaming services in accordance with Regulation (EU) No 531/2012.

**(11a) The conditions that may be included in the reference offers in order to allow mobile network operators to prevent permanent roaming or anomalous or abusive use of wholesale roaming should be clarified. In particular, where the visited network operator believes that permanent roaming or anomalous or abusive use of roaming by a significant number of the roaming providers' customers is taking place, it should be able to require from the roaming provider information liable to show whether its customers are in a situation of permanent, anomalous or abusive use of wholesale roaming access, such as the number of customers with insignificant domestic consumption compared to the roaming consumption. Moreover, termination of wholesale roaming agreements with a view to preventing permanent roaming or anomalous or abusive use of wholesale roaming should only be effected where less stringent measures have failed to address the issue and upon prior authorisation by the competent national regulatory authority.**

- (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.
- (13) The maximum wholesale charges should act as a safeguard level and ensure that operators can recover their costs, including joint and common costs. It should also enable the widespread sustainable provision of RLAH, while at the same time leaving margin for commercial negotiations between operators.
- (14) The cost estimates for the provision of wholesale roaming services, including joint and common costs, have been assessed on the basis of several sources. One source was a general cost model for wholesale roaming services populated with national data and based on the method used by national regulatory authorities to determine mobile termination rates caps in accordance with Union law. A second source was alternative cost estimates based on consistent approaches across the Union on the regulation of national mobile termination rates. The assessment also drew on current wholesale roaming charges for unbalanced traffic in the Union and evidence of current wholesale access charges in domestic markets.

- (15) In considering cost estimates, the potential impact of the seasonal nature of roaming traffic on the overall costs of providing wholesale roaming services at national level was taken into consideration. Such estimates noted the counterbalancing effects that would mitigate any potential increase in costs caused by the seasonality of roaming traffic. In particular for data services, increasing domestic demand means that any seasonal traffic peak in a given year is likely to be exceeded by total domestic demand in the following year(s). Accordingly, since terrestrial mobile communications networks are dimensioned in order to cope with this general upward trend driven by domestic demand, any peak in total network demand caused by seasonal roaming flows is unlikely to drive mobile network dimensioning costs. For voice calls, where demand is more stable, in some countries seasonal roaming peaks may have an impact on overall network dimensioning costs. However, such localised seasonal peaks in traffic are likely to also be driven by domestic users moving into tourist areas and be somewhat mitigated by compensating effect of roamers on capacity usage in metropolitan areas during the summer holiday season.
- (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 been taken into account, including the transit costs of delivering data traffic to an exchange point identified by the home network operator.
- (17) The portfolio of services provided by each wholesale roaming provider, and their expected volumes of traffic should be taken into account when considering the safeguard role of wholesale roaming charges in achieving the twin objectives of ensuring that wholesale providers recover all their relevant costs, while ensuring that the non-sustainability of RLAH remains exceptional.
- (18) Therefore, the existing maximum wholesale roaming charges for voice calls, SMS and data services should be lowered. **A declining glide path should be introduced for data services in order to reflect as closely as possible the expected decrease of the costs underlying the provision of those services over the next years.**

- (18a) In specific and exceptional circumstances, where a visited network operator is not able to recover its overall actual and projected costs of providing wholesale roaming access from its overall actual and projected revenues from the provision of such access, that operator should be able, upon authorisation by the national regulatory authority taking utmost account of the opinion of BEREC, to apply average wholesale roaming charges exceeding those set in this Regulation. Such a surcharge should apply only to the extent necessary to recover all relevant costs of providing such services, should not lead to a total average wholesale roaming charge between any pair of operators exceeding EUR 0.0085 per megabyte for regulated data services, and should be granted for a maximum duration of one year, without prejudice to the possibility for operators to apply for subsequent authorisations following the same procedure. The limit of EUR 0.0085 per megabyte means that authorisations to apply surcharges for regulated data services will only be requested from 15 June 2019, once the relevant maximum average wholesale charge is below this level. The assessment of the sustainability of the provision of wholesale roaming access should be based on an efficient cost standard.**
- (19) While ensuring the confidentiality of business and commercial secrets and in order to monitor and supervise the application of Regulation (EU) No 531/2012 and developments in wholesale roaming markets, national regulatory authorities should be entitled to require information on wholesale roaming agreements that do not provide for the application of the maximum wholesale roaming charges. They should also be allowed to require information on the adoption and application of conditions in wholesale agreements aimed at preventing permanent roaming and on any anomalous or abusive use of wholesale roaming access for purposes others than providing regulated roaming services to roaming providers' customers travelling within the Union.

- (20) The specific price regulation applicable to roaming entails that an overall Union cap applies to a composite product which may also include other wholesale access and interconnection inputs, including in particular those subject to national or, potentially, cross-border regulation. In this regard divergences across the Union in the regulation of these inputs are foreseen to decrease, in particular through the prospect of additional measures taken in accordance with Directive 2002/21/EC (Framework Directive)<sup>8</sup> aiming at ensuring greater consistency of regulatory approaches. In the meantime, any dispute between visited network operators and other operators on the rates applied to those regulated inputs necessary for the provision of wholesale roaming services should be addressed taking into account the opinion to be issued by BEREC, in accordance with the specific regulatory obligations applicable to roaming as well as with Directive 2002/21/EC (Framework Directive), Directive 2002/20/EC (Authorisation Directive)<sup>9</sup>, Directive 2002/19/EC (Access Directive)<sup>10</sup> and Directive 2002/22/EC (Universal Service Directive)<sup>11</sup>.
- (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 implementation of these rules.

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<sup>8</sup> Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), OJ L 108, 24.4.2002, p. 33.

<sup>9</sup> Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive), OJ L 108, 24.4.2002, p. 21.

<sup>10</sup> Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), OJ L 108, 24.4.2002, p. 7

<sup>11</sup> Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), OJ L 108, 24.4.2002, p. 51.

- (22) 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.
- (23) Regulation (EU) No 531/2012 should therefore be amended accordingly.
- (24) The objectives of this Regulation cannot be sufficiently achieved by the Member States because national measures cannot ensure that rules on national wholesale markets are consistent with EU rules on retail roaming services. Instead, the cross-border effects of national wholesale roaming markets on the provision of retail roaming services within the Union, mean the objectives can be better achieved at Union level. The Union may therefore adopt measures, in accordance with the principle of subsidiarity set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve its objectives.
- (25) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union,

HAVE ADOPTED THIS REGULATION:

*Article 1*

Amendments to Regulation (EU) No 531/2012

Regulation (EU) No 531/2012 is amended as follows:

(1) In Article 3, **first subparagraph of** paragraph 4 is replaced by the following:

‘4. Rules on regulated wholesale roaming charges laid down in Articles 7, 9 and 12 shall apply to the provision of access to all components of wholesale roaming access referred to in paragraph 3, unless both parties to the wholesale roaming agreement explicitly agree that any average wholesale roaming charge resulting from the application of the agreement should not be subject to the maximum regulated wholesale roaming charge for a defined ~~the~~ period of ~~time~~ **validity of their agreement.**’

(1a) **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.**

**The reference offer may in particular provide that, where the visited network operator believes that permanent roaming or anomalous or abusive use of roaming by a significant number of the roaming providers' customers is taking place, the visited network operator may require the roaming provider to provide, without prejudice to Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector, information liable to show whether its customers are in a situation of permanent, anomalous or abusive use of wholesale roaming access, such as the number of customers with insignificant domestic consumption compared to the roaming consumption.<sup>12</sup>**

**The reference offer may also provide for the possibility to terminate wholesale roaming agreements where the home network operator has been informed by the visited network operator that, based on objective criteria, permanent roaming or anomalous or abusive use of wholesale roaming access is taking place and less stringent measures have failed to address the issue. Termination of a wholesale roaming agreement based on those grounds may only take place upon prior authorisation by the competent national regulatory authority.**

**The competent national regulatory authority shall take its decision within two months of the receipt of the request for an authorisation.**

**If necessary, national regulatory authorities shall impose changes to reference offers to give effect to obligations laid down in this Article.'**

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<sup>12</sup> Recital 11a.



(2) In Article 7, paragraphs 1 and 2 are replaced by the following **from 15 June 2017**:

‘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~~**0.0353** per minute as of 15 June 2017 ~~and~~. **This maximum charge** shall, without prejudice to Article 19, remain at EUR ~~0.04~~**0.0353** until 30 June 2022.

2. The average wholesale charge referred to in paragraph 1 shall apply between any pair of operators and shall be calculated over a 12-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 paragraph 1 or before 30 June 2022.’

(3) In Article 9 paragraph 1 is replaced by the following **from 15 June 2017**:

‘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 a regulated roaming SMS message originating on that visited network shall not exceed a safeguard limit of EUR 0.01 per SMS message and shall, without prejudice to Article 19, remain at EUR 0.01 until 30 June 2022.’

(4) In Article 12 paragraph 1 is replaced by the following **from 15 June 2017**:

‘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~~**0.01** per megabyte of data transmitted~~and~~. **That maximum charge shall decrease to EUR 0.0085 per megabyte on 15 June 2018, to EUR 0.0070 per megabyte on 15 June 2019, to EUR 0.0060 per megabyte on 15 June 2020, to EUR 0.0050 per megabyte on 15 June 2021 and** shall, without prejudice to Article 19, remain at EUR ~~0.0085~~**0.0050** per megabyte of data transmitted until 30 June 2022.’

**(4a) The following Article is inserted:**

*'Article 13*

**Sustainability of the wholesale charges**

**1. In specific and exceptional circumstances, with a view to ensuring the sustainability of the provision of wholesale roaming access, where a visited network operator is not able to recover its overall actual and projected costs of providing wholesale roaming access in accordance with Articles 3, from its overall actual and projected revenues from the provision of such access, that operator may apply for authorisation to apply average wholesale roaming charges exceeding those set in Articles 7, 9 and 12. That surcharge shall be applied only to the extent necessary to recover the costs of providing wholesale roaming access.**

**1a. The wholesale roaming surcharge for the provision of regulated data roaming services shall not lead to a total average wholesale roaming charge between any pair of operators exceeding EUR 0.0085 per megabyte.**

**2. Where a visited network operator decides to avail itself of paragraph 1 of this Article, it shall without delay submit an application to the national regulatory authority and provide it with all necessary information.**

**3. Upon receipt of an application pursuant to paragraph 2, the national regulatory authority shall assess whether the visited network operator has demonstrated that it is a cost efficient operator and has established that it is unable to recover its costs in accordance with paragraph 1, with the effect that the sustainability of the provision of wholesale roaming access would be appreciably undermined.**

- 4. Where it envisages granting an authorisation to apply wholesale roaming surcharges, the national regulatory authority shall provide a detailed analysis and seek BEREC's opinion, which shall be delivered within two months after receipt of the request.**

**Taking utmost account of BEREC opinion, the national regulatory authority shall authorise the wholesale roaming surcharge, for a maximum duration of one year starting from the date of the authorisation, where the conditions laid down in paragraphs 1 and 3 are met.**

- 5. Where the national regulatory authority considers that the application is unfounded, or considers that insufficient information has been provided, it shall reject the application made pursuant to paragraph 2.**

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

‘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~~**may** 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.’

(6) Article 19 is amended as follows:

(a) in paragraph 3:

- the first sentence is replaced by the following:

‘In addition, the Commission shall submit a report to the European Parliament and the Council every two years after 15 June 2017.’

- **a second subparagraph is inserted:**

**‘If a report shows that this Regulation has not adequately contributed to the smooth functioning of the internal market, it shall be accompanied by appropriate legislative proposals to the European Parliament and the Council.’**

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

‘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 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.’

*Article 2*

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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