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From:	Presidency
To:	Permanent Representatives Committee
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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 - Analysis of the final compromise text with a view to agreement

Introduction

1. The third trilogue on the above proposal was held on 31 January 2017 where an informal agreement was reached on the basis of the text as reflected in Annex.
2. The Permanent Representatives Committee is thus invited to:
 - a. endorse the annexed compromise text as agreed in the trilogue, and

- b. mandate the Presidency to inform the European Parliament that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the compromise package contained in the Annex to this document (subject to revision by the lawyer linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.

3. In the Annex **bold** or ~~striketrough~~ indicate a change compared to the Commission's proposal or the text of the original regulation.

Changes compared to the COREPER mandate

4. The third COREPER mandate was granted on the basis of document 5435/17 with a revised glide-path for wholesale roaming data caps (8.5 / 7 / 5.5 / 5 / 4).
5. The most significant changes to the COREPER mandate concern **Article 12 regarding the wholesale data roaming cap**, where the numbers have been updated to reflect the trilogue agreement and the **deletion of Article 12a and the corresponding Recital 18a regarding the sustainability mechanism**.
6. Agreement has been reached at technical level on a number of other areas which have been included in the text. The Parliament has accepted the Council text in the following areas:
 - a. Article 1(-1): Parliament amendment removed
 - b. Article 3(1) subparagraph 4: Council text accepted
 - c. Article 16(1) subparagraph 1: Council text accepted
 - d. Article 17(1): Parliament amendments removed, Council text accepted
 - e. Article 19(3) paragraphs a-cd: Council text accepted
 - f. Article 19(4): Council text accepted.
 - g. Recital 3: Council text accepted
 - h. Recital 3a: Parliament amendment removed
 - i. Recital 5: Parliament amendment removed
 - j. Recital 7: Council text accepted
 - k. Recital 8: Council text accepted

- l. Recital 9: Parliament amendment removed
- m. Recital 11a (Council): Council text accepted
- n. Recital 11a (EP): Parliament amendment removed
- o. Recital 16: Council text accepted
- p. Recital 18: Council text accepted
- q. Recital 21: Council text accepted
- r. Recital 22: Council text accepted
- s. Recital 22a: Council text accepted

7. In the following areas compromise drafting has been found:

- a. Article 3(6): Council text accepted, with additional clarification that the visiting network operator must provide information only relating to the network of the visited operator, that the three month limit for decision is unaffected by the need for consultation and replacing the term 'roaming operator' with 'visited network operator' consistent with the wider text.
- b. Article 16(2): Specifying that, as well as NRAs making information available, BEREC shall do so where relevant.
- c. Article 16(4a): Council text accepted, with additional clarification that the sharing of confidential information is needed also for the 'review' of the application of the regulation.
- d. Article 19(3) paragraph (ce): Council text accepted, with additional clarification that the Commission will review the application and the consistency of fair use policies applied by operators.
- e. Recital 4: Parliament amendment accepted in part and modified to make clear that this regulation contributes to positive effects for domestic markets.
- f. Recital 12: Parliament amendment accepted in part and modified to clarify the relationship between wholesale charges and competition.
- g. Recital 21: has been amended in light of the removal of the sustainability mechanism and to include direct reference to paragraphs cc and cd in Article 19 at the request of the Parliament.

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,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EU) No 531/2012 of the European Parliament and the Council 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 considered the Telecom Single Market package, adopted by Regulation (EU) 2015/2120 of the European Parliament and of the Council , 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 **as of 15 June 2017** 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. **This Regulation should therefore contribute to pricing models in domestic markets not being affected by the abolition of retail roaming surcharges.**
- (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.
- (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 market¹. 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 **have** clearly ~~make~~ **made** RLAH more sustainable, the review shows that this ~~is~~ **has** not **been** 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~~ **to smaller operators, to mobile virtual network operators (MVNOs), or to 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.

¹ 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 considers that permanent roaming or anomalous or abusive use of roaming by a significant share of the roaming providers' customers is taking place, it should be able to require from the roaming provider – in an aggregated manner and in full compliance with the EU and national data protection requirements – information allowing determination of whether a significant share of the customers of that provider are in a situation of permanent, anomalous or abusive use of wholesale roaming access, such as the share 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 situation and be subject to prior authorisation by the competent national regulatory authority taking utmost account of the opinion of BEREC where it has been consulted. Less stringent measures could consist of setting higher wholesale charges not exceeding the maximum wholesale**

charges provided for in this Regulation for volumes exceeding an aggregated volume specified in the contract in advance, or from the moment when the visited network operator has established and informed the home network operator that, based on objective criteria, permanent roaming by a significant share of the roaming provider's customers or anomalous or abusive use of wholesale roaming access is taking place. Less stringent measures could also consist of the commitment by the home network operator to adopt or revise its fair use policies applicable to its customers in accordance with the detailed rules adopted on the basis of Article 6d, or in the possibility for the visited network operator to request a revision of the wholesale roaming agreement. In the interests of transparency, the national regulatory authority should make information concerning applications for such authorisations available to the public, subject to business confidentiality.

- (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. **Wholesale charges at an appropriate level should facilitate sustainable competition, including by new entrants, small and medium-sized enterprises and start-ups.**
- (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) **Usage of data services is growing rapidly in the Union and across the world. The introduction of RLAH from 15 June 2017 should contribute to that growth in the 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 and be set in Euros per gigabytes where a gigabyte is equal to 1000 megabytes as defined in standard ISO/IEC 80000.** 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 **substantially**.
- (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)² 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)³, Directive 2002/19/EC (Access Directive)⁴ and Directive 2002/22/EC (Universal Service Directive)⁵.

² 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.

³ 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.

⁴ 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

⁵ 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.

- (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 to the European Parliament and to the Council, an interim report summarising the effects of the abolition of retail roaming surcharges, taking into account relevant reporting by BEREC. 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 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. The Commission's biennial reports should in particular analyse the extent to which exceptional retail roaming surcharges have been authorised by national regulatory authorities, the ability of home network operators to sustain their domestic charging models and the ability of visited network operators to recover the efficiently incurred costs of providing regulated wholesale roaming services.** In order to enable such reporting with a view to properly assessing how the roaming markets will adapt to RLAH rules, sufficient data should be gathered on the functioning of these markets after the implementation of these rules.

- (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. **On the basis of the data collected, BEREC should report regularly on the relationship between retail prices, wholesale charges and wholesale costs for roaming services.**
- (22a) **The Commission, BEREC and any national regulatory authority concerned should fully ensure business confidentiality when sharing information for the purposes of reviewing, monitoring and supervising the application of Regulation (EU) No 531/2012. Compliance with business confidentiality requirements should therefore not prevent national regulatory authorities from being able to timely share confidential information for such purposes.**
- (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

(1) In Article 3, 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.** ²

Without prejudice to the first subparagraph, in the case of wholesale roaming resale access, mobile network operators may charge fair and reasonable prices for components not covered by paragraph 3.’

(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. Where specified in a reference offer, such conditions shall include the specific measures that the visited network operator may take to prevent permanent roaming or anomalous or abusive use of wholesale roaming access, and the objective criteria on the basis of which the visited network operator may take such measures. Such criteria may refer to aggregate roaming traffic information. It shall not refer to specific information related to individual traffic of roaming customers of the roaming provider.

The reference offer may inter alia provide that, where the visited network operator has reasonable grounds to consider that permanent roaming by a significant share of the roaming provider's customers or anomalous or abusive use of wholesale roaming access is taking place, the visited network operator may require the roaming provider to provide, without prejudice to EU and national data protection requirements, information allowing determination of whether a significant share of its customers are in a situation of permanent, anomalous or abusive use of roaming access on the network of the visited operator, such as the share of customers for which a risk of abusive or anomalous use of regulated retail roaming services provided at the applicable domestic retail price has been established based on objective indicators in accordance with the detailed rules on the application of the 'fair use policy' laid down on the basis of Article 6d.

The reference offer may in particular, as a last resort and where less stringent measures have failed to address the issue, provide for the possibility to terminate wholesale roaming agreements where the visited network operator has established and informed the home network operator that, based on objective criteria, permanent roaming by a significant share of the roaming provider's customers or anomalous or abusive use of wholesale roaming access is taking place.

Unilateral termination of a wholesale roaming agreement based on grounds of permanent, anomalous or abusive use of roaming access may only take place upon prior authorisation by the national regulatory authority of the visited network operator which shall take a decision on such a request, and inform the Commission thereof, within three months of the receipt of the request, after having consulted the national regulatory authority of the home network operator.

Without prejudice to the three month time limit for the decision by the national regulatory authority of the visited network operator, that national regulatory authority and the national regulatory authority of the home network operator may each request BEREC to adopt an opinion as to the action to be taken in accordance with the provisions of this Regulation. Where such a request has been made to BEREC, the national regulatory authority of the visited network operator shall await BEREC's opinion, which shall be adopted within one month of the receipt of the request, before deciding on the request and its decision shall take the utmost account of the opinion adopted by BEREC. The national regulatory authority shall make information concerning such authorisations available to the public, subject to business confidentiality. This subparagraph is without prejudice to the power of the national regulatory authority to require immediate cessation of breaches of the obligations pursuant to Article 16, paragraph 6 and to the right of the visited network operator to apply adequate measures in order to combat fraud.

If necessary, national regulatory authorities shall impose changes to reference offers, **including as regards the specific measures that the visited network may take to prevent permanent roaming or anomalous or abusive use of wholesale roaming access, and the objective criteria on the basis of which the visited network may take such measures,** to give effect to obligations laid down in this Article. ’

(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~~ **0.032** per minute as of 15 June 2017. This maximum charge shall, without prejudice to Article 19, remain at EUR ~~0.04~~ **0.032** 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 ~~0.00085~~ **7.70** per ~~megabyte~~ **gigabyte** of data transmitted. **That maximum charge shall decrease to EUR 6.00 per gigabyte on 1 January 2018, to EUR 4.50 per gigabyte on 1 January 2019, to EUR 3.50 per gigabyte on 1 January 2020, to EUR 3.00 per gigabyte on 1 January 2021 and to EUR 2.50 per gigabyte on 1 January 2022** and shall, without prejudice to Article 19, remain at EUR ~~0.0085~~ **2.50** per ~~megabyte~~ **gigabyte** of data transmitted until 30 June 2022.’

(4a) In Article 16, paragraph 2 is replaced by the following:

‘2. National regulatory authorities **and, where relevant, 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.’

In Article 16, the following paragraph 4a is added:

‘4a. Where information is considered confidential by a national regulatory authority in accordance with Union and national rules on business confidentiality, the Commission, BEREC and any other national regulatory authorities concerned shall ensure such confidentiality. Business confidentiality shall not impede the timely sharing of information between them for the purposes of reviewing, monitoring and supervising the application of Regulation (EU) No 531/2012.’

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

‘3. In addition, the Commission shall submit to the European Parliament and the Council by 15 December 2018 an interim report summarising the effects of the abolition of retail roaming surcharges taking into account any relevant BEREC report. 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 after 15 June 2017 thereafter, accompanied, if appropriate, by a legislative proposal to amend the maximum wholesale charges for regulated roaming services laid down in this Regulation. Those biennial reports shall include, inter 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, **and in particular, based on the information provided by the national regulatory authorities, of the procedure for prior authorisations laid down in Article 3(6)**, has produced results in the development of competition in the internal market for regulated roaming services.
- (ca) the evolution of retail tariff plans available;**
- (cb) changes in data consumption patterns both for domestic and roaming services;**
- (cc) the ability of home network operators to sustain their domestic charging model 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 the application of fair use policies applied by operators in accordance with Article 6d, including identifying any inconsistencies in the application and implementation of such fair use policies;'**
- (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 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.’²

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, the evolution of actual wholesale roaming rates for unbalanced traffic between roaming providers, **and on the relationship between retail prices, wholesale charges and wholesale costs for roaming services. BEREC shall assess how closely those elements relate to each other.**

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.’

Article 2

Entry into force

This Regulation shall enter into force on the ~~twentieth~~ **third** 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
