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Subject: Proposal for a Regulation of the European Parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No 1211/2009 and (EU) No 531/2012  
- Examination of the amended Presidency text on roaming

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In the Working Party meeting of 17 February, the Presidency intends to engage in a discussion of the text in the Annex.

Amendments<sup>1</sup> in the text take into account the results of the Working Party discussions of 3 and 10 February and the written contributions from Member States.

In order to address Member States' requests for further clarification of some parts of the text, respective recitals have been included. As for the outstanding issues – basic roaming allowance and the issue of incoming roaming calls, the Presidency provides an additional explanation below.

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<sup>1</sup> Compared to the previous text (document 5626/15) additions (apart from recitals) are marked with underline and deletions are marked with ~~strikethrough~~.

Regarding the basic roaming allowance:

- As stated in document 5626/15, the Presidency reiterates that the basic roaming allowance should be defined in a simple and transparent manner. Moreover, the aim of the allowance should not be to replicate domestic consumption pattern or to avoid abnormal usage (appropriate definition and recital have been included).
- As stated in document 5626/15, the Presidency proposes, as a starting point for discussion and as indicated in square brackets in the Annex, a basic roaming allowance which would be available for a minimum of 7 (not necessarily consecutive) days per year, and would include a minimum daily consumption of 5 minutes of regulated voice calls made, 5 minutes of regulated voice calls received, 5 regulated SMS sent and 5 megabytes of regulated data roaming services.
- These values would in a simple and transparent manner provide basic and essential mobile phone usage for consumers when travelling. They are broadly based on the data provided by BEREC (document BoR (14)209, Annex II) regarding the average number of days European consumers spend abroad per year (5.7 days), the daily average domestic retail consumption based on the weighted/median average per year (125/133 minutes for calls made; 76/63 SMS sent; 292/256 megabytes) and the probable impact on roaming providers.
- Acknowledging the views expressed by Member States on the technical difficulties operators might face in the implementation of the proposed obligation to alert roaming customers that their basic roaming allowance has reached its limit, the Presidency proposes to delete some of the previously proposed amendments in document 5626/15, Article [37] (3) (4).

- The Presidency is also grateful for the alternative proposal for the definition of a basic roaming allowance by establishing a direct link (by way of a percentage) between the minimum basic roaming allowance and the retail price on domestic markets. One of the main advantages of such a proposal is setting a proportionate basic roaming allowance compared to the domestic consumption of each consumer. However, the Presidency invites Member States to consider whether such an approach would offer a sufficient level of transparency given different tariff plans and consumption patterns. In addition, it should be assessed whether “high-value” contracts would receive a substantial allowance, while “low-value” tariff plans would not benefit from an allowance which could be considered reasonable (for example, allowing for a few seconds of regulated roaming calls made). The Presidency would be grateful to receive Member States’ feedback on this proposal.

Regarding incoming roaming calls:

- In document 5626/15 the Presidency proposed that the volume of incoming calls would not be limited, however, roaming providers would be able to implement usage policies necessary to prevent anomalous or abusive usage of calls received.
- Due to the fact that mobile termination rates are not harmonized within the European Union, and to respond accordingly to requests from Member States, the Presidency proposes the following.
- First of all, operators would need to offer a minimum basic roaming allowance for calls received (the same number of minutes as for calls made) at a domestic retail price (i.e. without any charge).

- Furthermore, once the limit of the basic roaming allowance has been reached, roaming operators would be able to apply a surcharge for regulated roaming incoming calls. As indicated in square brackets in Article [37] (5), proposed Article 6a(2)b states that this surcharge shall not exceed the difference between the mobile termination rate charged by the roaming provider and the mobile termination rate paid by the same roaming provider to the visited network operator for that same incoming call. The Presidency believes that such a solution would allow operators, who charge a domestic mobile termination rate which is lower than the termination rate requested by the visited network operator, to cover all costs.
- Alternatively, the surcharge could be set at the current weighted average of mobile termination rates across the European Union. The advantage of this approach is its simplicity, however, it is necessary to consider whether this solution would be future proof due to the changes in mobile termination rate levels. Moreover, it should also be assessed whether it ensures the maximum possible benefit for the consumers. Therefore, the Presidency would be grateful to receive Member States' feedback on both options.

[1] Regulation No 531/2012 establishes the policy objective that the difference between roaming and domestic tariffs should approach zero. However, the ultimate aim of eliminating the difference between domestic charges and roaming charges cannot be attained in a sustainable manner with the observed level of wholesale charges. Therefore, a transitional period is needed, allowing roaming providers to adapt to wholesale market conditions while providing their customers with a possibility to satisfy their communications needs. During the period concerned, roaming providers should offer roaming services at levels not exceeding those applicable for domestic services, with a possibility to add a surcharge. Moreover, with a view to ensuring basic mobile phone usage for consumers when periodically travelling, the Regulation should determine the minimum level of a basic roaming allowance. This transitory basic roaming allowance should be simple and transparent, and set at a level which ensures that consumers' basic communication needs are facilitated while travelling within the EU, until the necessary review of underlying wholesale roaming market conditions has been undertaken. The basic roaming allowance should take account of the average travelling and domestic consumption patterns of all Europeans, it being understood that such an average pattern will not reflect the practices of all individual consumers.

[2] With a view to improving competition in the retail roaming market, Regulation (EU) No 531/2012 requires domestic providers to enable their customers to access regulated voice, SMS and roaming services, provided as a bundle by any alternative roaming provider. Given that the retail roaming regime set out in Articles 6a and 6b of this Regulation is expected to substantially decrease the retail roaming charges set out in Articles 8, 10 and 13 of Regulation (EU) No 531/2012, it would no longer be proportionate to oblige operators to implement this type of separate sale of regulated roaming services. Providers which have already enabled their customers to access regulated voice, SMS and roaming services, provided as a bundle by any alternative roaming provider, may continue to do so.

On the other hand, while the basic roaming allowance and the mechanism which limits the surcharge over the domestic retail price provide data roaming customers with certain safeguards against excessive roaming charges, it may not allow roaming customers to confidently replicate the domestic consumption patterns for data roaming services. Given the increasing demand and importance of data roaming services, roaming customers should be provided with alternative ways of accessing data roaming services when travelling. Therefore, the obligation on domestic and roaming providers not to prevent customers from accessing regulated data roaming services provided directly on a visited network by an alternative roaming provider as provided for in Regulation (EU) No 531/2012 should be maintained.

[3] In accordance with the calling party pays principle mobile customers do not pay for receiving domestic mobile calls, instead the cost of terminating a call in the network of the called party is covered in the retail charge of the calling party. The convergence of mobile termination rates across the Member States should allow for the implementation of the same principle for regulated roaming calls. However, since this is not yet the case, this Regulation allows roaming providers, after the respective basic roaming allowance is exceeded, to charge a retail roaming fee for incoming calls, provided it does not exceed [the difference between the mobile termination rate charged by the roaming provider and the mobile termination rate paid by the same roaming provider to the visited network operator for that same incoming call]. This is considered to be a transitory regime until the Commission addresses this outstanding issue by exercising its powers under the relevant provisions of the Framework Directive.

In addition, in order to prevent anomalous or abusive usage of regulated roaming calls received, roaming providers may apply appropriate usage policies. These usage policies may include limitations in the volumes of roaming calls received free of charge in case those volumes demonstrably exceed the average volumes of domestic calls received.

(1) In Article 1, paragraph 7 is deleted.

(2) In Article 2, paragraph 2 is amended as follows:

a) points (i), (l) and (n) are deleted;

b) the following points are added:

(r) “domestic retail price” means roaming provider’s retail per-unit domestic charge applicable to calls made, SMS sent (with the exception of calls and SMS messages originated and terminated on the same network) and data consumed by a customer that are both originating and terminating on a public communications networks within a Member State;

(s) “basic roaming allowance” means a certain number of minutes of regulated roaming voice calls made and received, a certain number of regulated roaming SMS sent and a certain amount of megabytes of regulated data roaming services, which the roaming provider must offer to its roaming customers for a certain number of not necessarily consecutive days per calendar year at a price which shall not exceed the respective domestic retail price.

~~(4)~~ (3) Article 4, is amended as follows:

(a) the title of Article 4 is replaced by the following:

Separate sale of regulated retail *data* roaming services;

(b) paragraph 1, the first subparagraph is deleted;

(c) paragraph 4 is deleted;

(d) paragraph 5 is replaced by the following:

The technical characteristics of regulated roaming **data** services shall not be altered in such a way as to make them differ from the technical characteristics of the regulated **data** roaming services, including the quality parameters, as provided to the customer before the switch.

(4) Article 5 is amended as follows:

(a) the title of Article 5 is replaced by the following:

Implementation of separate sale of regulated retail **data** roaming services.

(b) paragraph 1 is replaced by the following:

Domestic providers shall implement the **obligation related to** separate sale of regulated retail **data** roaming services provided for in Article 4 so that customers can use separate **data** regulated roaming services. Domestic providers shall meet all reasonable requests for access to facilities and related support services relevant for the separate sale of regulated retail **data** roaming services. Access to those facilities and support services that are necessary for the separate sale of regulated **data** roaming services, including user authentication services, shall be free of charge and shall not entail any direct charges to customers.

(c) paragraph 2 is replaced by the following:

In order to ensure consistent and simultaneous implementation across the Union of the separate sale of regulated retail **data** roaming services, the Commission shall, by means of implementing acts and after having consulted BEREC, adopt, detailed rules on a technical solution for the implementation of the separate sale of regulated retail **data** roaming services. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 6(2).



(d) in paragraph 3 the introduction is amended as follows:

The technical solution to implement the separate sale of regulated retail *data* roaming services shall meet the following criteria:

(2) (5) Articles 8, 10 and 13 are deleted and replaced as follows:

### *Article 6a*

#### *Retail roaming charges*

1. *Roaming providers shall include in all tariff plans containing regulated roaming services a basic roaming allowance referred to in Article 6b(1). For consumption within the basic allowance, roaming providers may not levy any surcharge in comparison to the ~~charges~~ domestic retail price for mobile communications services at domestic level on roaming customers in any Member State for any regulated roaming call made or received, for any regulated roaming SMS/MMS message sent and for any regulated data roaming services used, nor any general charge to enable the terminal equipment or service to be used abroad.*
2. *Without prejudice to the third subparagraph, if roaming providers may apply a surcharge for the consumption of regulated roaming services in excess of the basic roaming allowance. The, it shall meet the following requirements:*
  - (a) *the surcharge applied for regulated roaming calls made, regulated roaming SMS message sent and regulated data roaming services shall not exceed the maximum wholesale charges provided for in Articles 7, 9 and 12, respectively.*
  - (b) *the surcharge applied for regulated roaming calls received shall not exceed [the difference between the mobile termination rate charged by the roaming provider and the mobile termination rate paid by the same roaming provider to the visited network operator for that call].*

**Roaming providers may implement usage policies necessary to prevent anomalous or abusive usage of calls received.**

**Roaming providers shall not apply any surcharge to a regulated roaming SMS message received or to a roaming voicemail message received. This shall be without prejudice to other applicable charges such as those for listening to such messages.**

*This paragraph shall not preclude offers which provide roaming customers, for a per diem or any other fixed periodic charge, a certain volume allowance consistent with ordinary domestic usage and typical travel periods provided that ~~consumption of the full~~ amount of the volume ~~included in the offer~~ **actually consumed** leads to a unit price per regulated calls made, SMS and data roaming services which does not exceed the **respective domestic retail price and the maximum surcharge as set out in the first subparagraph** ~~wholesale charges provided for in Articles 7, 9 and 12, respectively.~~*

3. *Roaming providers may offer and roaming customers may deliberately choose a roaming tariff other than the one set out in paragraphs 1 and 2, by virtue of which roaming customers benefit from a different tariff for regulated roaming service than they would have been accorded in the absence of such a choice. The roaming provider shall remind those roaming customers of the nature of the roaming advantages which would thereby be lost.*

**Without prejudice to the previous subparagraph, roaming providers shall apply the tariff set out in paragraphs 1 and 2 to all existing and new roaming customers automatically.**

## Article 6b

### Basic roaming allowance

- 1. The basic roaming allowance shall be available at minimum for [a] days per calendar year and shall allow a minimum daily consumption of [b] minutes of regulated voice calls made, ~~all~~ [b] minutes of regulated voice calls received, [c] regulated SMS sent and [d] megabytes of regulated data roaming services. ~~Roaming providers may implement usage policies necessary to prevent anomalous or abusive usage of calls received.~~*
- 2. As part of the exercise referred to in Article 19(5), BEREC shall 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 annually publish information on market developments and provide their assessment on how these developments might affect the volume and availability of the basic roaming allowance.*
- 3. Roaming providers shall publish and include in their contracts detailed quantified information on how the basic roaming allowance is applied, by reference to its main pricing or volume parameters.*

(↔) (6) In Article 14, paragraphs 1 and 3 are replaced as follows:

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

That basic personalised [...] information shall include *information on the basic roaming allowance (volume and availability in number of days) and on the charges which apply in excess of the basic roaming allowance within the EU* (in the currency of the home bill provided by the customer's domestic provider) to which the customer may be subject under his tariff scheme for:

- (a) making regulated roaming calls within the visited Member State and back to the Member State of his domestic provider, as well as for regulated roaming calls received; and
- (b) sending regulated roaming SMS messages while in the visited Member State.

[Subparagraphs 3-5 unchanged]

~~*Each roaming provider shall ensure that an appropriate notification is sent to the roaming customer's mobile device automatically by means of a Message Service to alert roaming customers that their consumption of regulated roaming calls and regulated SMS has reached the limit of the basic roaming allowance.*~~

The first, second, fourth and fifth subparagraphs *except the reference to the basic roaming allowance therein* shall also apply to voice and SMS roaming services used by roaming customers travelling outside the Union and provided by a roaming provider.

3. Roaming providers shall provide all users with full information on applicable roaming charges, [...] when subscriptions are taken out. [...] They shall also provide their roaming customers with updates on applicable roaming charges without undue delay each time there is a change in these charges.

[...] They shall send a reminder at reasonable intervals thereafter to all customers who have opted for another tariff [...].

(4) (7) In Article 15, paragraphs 2 is and 6 are replaced as follows:

2. An automatic message from the roaming provider shall inform the roaming customer that the latter is *using data roaming services and provide basic personalised information on the basic roaming allowance (volume and availability in number of days) and on the charges which apply in excess of the basic roaming allowance* (in the currency of the home bill provided by the customer's domestic provider), expressed in price per megabyte, applicable to the provision of regulated data roaming services to that roaming customer in the Member State concerned, except where the customer has notified the roaming provider that he does not require that information. ~~*Each roaming provider shall ensure that an appropriate notification is sent to the roaming customer's mobile device automatically by means of a Message Service to alert roaming customers that their consumption of regulated data roaming services has reached the limit of the basic roaming allowance.*~~

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

[Subparagraph 3 unchanged]

6. This Article, with the exception of paragraph 5 and of the reference to the basic roaming allowance in paragraph 2, and subject to the second and third subparagraph of this paragraph, shall also apply to data roaming services used by roaming customers travelling outside the Union and provided by a roaming provider.

*[Subparagraphs 2 and 3 unchanged]*

(5) (8) Article 16(4), is amended as follows:

a) in the first paragraph, the following subparagraph is added:

*National regulatory authorities shall monitor in particular whether roaming providers availing of Article 6a(3) engage in business practices which amount to circumvention of Articles 6a and 6b.*

b) paragraph 2 is replaced by the following:

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

(6) (9) Article 19 is replaced by the following:

1. *Upon entry into force of this Regulation, the Commission shall initiate a review of the wholesale roaming market with a view to assessing measures necessary, if any, to ensure phasing out of retail roaming surcharges. The Commission shall review, inter alia, the degree of competition in ~~the~~ national wholesale markets, in particular the wholesale charges applied and the competitive situation of operators with limited geographic scope, including the effects of commercial agreements on competition as well as the ability of operators to take advantage of economies of scale. The Commission shall also assess the competition developments in the retail roaming markets. In particular, the review shall take into account the extent to which roaming providers have supplemented the basic roaming allowance, also in light of the BEREC assessment referred to in Article 6b(2), and the development of the level of the roaming surcharges.*
2. *The Commission shall, by 30 June 2018, after a public consultation, report to the European Parliament and the Council on the findings of the wholesale review referred to in paragraph 1, ~~and, if necessary, make appropriate legislative proposals.~~*

3. *If the report referred to in paragraph 2 shows that ~~(i) there is no level playing field between roaming providers and consequently that there is a need to amend wholesale roaming charges or to provide for another solution to address the issues identified at wholesale level~~ or ~~(ii) that customers still cannot confidently replicate their domestic consumption pattern at domestic prices while periodically travelling within the Union~~ with a view to phase out retail roaming surcharges, the Commission shall, after consulting BEREC, make appropriate legislative proposals to the European Parliament and the Council to address this situation.*
4. In addition, the Commission shall submit a report to the European Parliament and the Council every two years after the report referred to in paragraph 2. Each report shall include a summary of the monitoring of the provision of roaming services in the Union and an assessment of the progress towards achieving the objectives of this Regulation.
5. In order to assess the competitive developments in the Union-wide roaming markets, BEREC shall regularly collect data from national regulatory authorities on the development of retail and wholesale charges for voice, SMS and data roaming services. Those data shall be notified to the Commission at least twice a year. The Commission shall make them public.

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 [X] - Entry into force*

1. *This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.*
2. *It shall apply from 30 June 2016.*