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## PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	25 February 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 85 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on roaming on public mobile communications networks within the Union (recast)

Delegations will find attached document COM(2021) 85 final.

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EUROPEAN  
COMMISSION

Brussels, 24.2.2021  
COM(2021) 85 final

2021/0045 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**on roaming on public mobile communications networks within the Union (recast)**

(Text with EEA relevance)

{SEC(2021) 90 final} - {SWD(2021) 27 final} - {SWD(2021) 28 final} -  
{SWD(2021) 29 final}

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **Reasons for and objectives of the proposal**

##### **Introduction**

Regulation (EU) No 531/2012<sup>1</sup> expires on 30 June 2022, therefore the aim of this proposal is to extend it, while adjusting the maximum wholesale charges to ensure sustainability of the provision of retail roaming services at domestic prices, introducing new measures to increase transparency and ensuring a genuine ‘roam-like-at-home’ experience in terms of quality of service and access to emergency services while roaming.

As Regulation (EU) No 531/2012 has been amended several times, the purpose of this proposal is to recast the Regulation to improve clarity and replace the multiple amending acts it contains<sup>2</sup>.

##### **Background**

EU regulatory intervention on wholesale and retail roaming markets has been necessary for the last 14 years in order to improve the conditions for the functioning of the internal market for roaming services within the Union.

The EU first adopted provisions to bring in a joint approach to regulating roaming on public mobile communications networks in the EU when it adopted Regulation (EC) No 717/2007<sup>3</sup>. In 2009, following a first review of these provisions, their duration was extended and the scope was widened<sup>4</sup>. Following a further review of the rules, Regulation (EU) No 531/2012 was then adopted. That Regulation amended the previous rules by lowering roaming prices for calls and SMS and capping roaming prices for data across the EU.

Regulation (EU) 2015/2120<sup>5</sup> amended Regulation (EU) No 531/2012 and required retail roaming surcharges to be abolished in the EU from 15 June 2017, subject to fair use of roaming services and the option to apply a sustainability derogation mechanism. These rules for retail roaming services in the Union are referred to in this explanatory memorandum as the ‘roam-like-at-home’ rules (or ‘RLAH’).

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<sup>1</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>2</sup> See Annex II to the proposal.

<sup>3</sup> Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC (OJ L 171, 29.6.2007, p. 32).

<sup>4</sup> Regulation (EC) No 544/2009 of the European Parliament and of the Council of 18 June 2009 amending Regulation (EC) No 717/2007 on roaming on public mobile telephone networks within the Community and Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (OJ L 167, 29.6.2009, p. 12).

<sup>5</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).

Although necessary, regulation at retail level alone is not sufficient to implement RLAH. For the abolition of retail roaming surcharges to be sustainable throughout the Union and to avoid distorting competition in domestic markets, national wholesale roaming markets need incentives to act in a competitive manner and provide wholesale roaming prices that enable operators to offer sustainable retail roaming services without additional charges.

To this end, the Commission carried out a review of the wholesale roaming market to assess the need for measures to enable retail roaming surcharges to be abolished. It adopted its report on the review of the wholesale roaming market on 15 June 2016<sup>6</sup>. Following the review, the Commission adopted on 17 May 2017 Regulation (EU) 2017/920<sup>7</sup> amending Regulation (EU) No 531/2012 as regards rules for wholesale roaming markets with the aim of abolishing retail roaming surcharges by 15 June 2017 without distorting the domestic visited and home markets.

On 29 November 2019, the Commission published its first full review of the roaming market (the ‘Commission Review Report’), showing that travellers across the EU have benefited significantly from the end of roaming charges in June 2017<sup>8</sup>. The use of mobile services (data, voice, SMS) while travelling in the EU has increased rapidly and massively, confirming the positive impact of roaming rules.

At wholesale level, the sharp reduction in price caps has contributed to a further reduction in wholesale roaming prices, often significantly below the level of regulated caps, which in turn makes the end of roaming charges sustainable for almost all roaming providers.

Although the Commission Review Report confirms that, on one hand the ‘roam-like-at-home’ rules have been a success and that, overall, the roaming market works well under such rules, on the other it concludes that, despite signs of some competition dynamics in both the retail and wholesale roaming markets, the underlying basic competition conditions have not changed and are not likely to change in the foreseeable future. Therefore the current retail and wholesale regulation is still necessary and cannot be lifted.

### **Reasons and objective of the proposal, the main amendments and the provisions that remain unchanged.**

The aim of this proposal is to extend the rules regulating the EU-wide roaming market beyond 2022, while amending the maximum wholesale charges, bringing in new measures to ensure a genuine RLAH experience while roaming, and repealing other measures that appear no longer necessary.

The proposed amendments to the rules are described in detail below<sup>9</sup>.

In essence, the aim of the main amendments proposed is to ensure operators can provide RLAH and recover costs in a sustainable manner at wholesale level. The proposal is to set EU-wide wholesale roaming maximum charges for calls made, SMS messages and data at lower levels than those valid until 30 June 2022. To reconcile the above two objectives of ensuring sustainability and cost recovery, the proposal sets out a two-step glide path for the

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<sup>6</sup> Report from the Commission to the European Parliament and the Council on the review of the wholesale roaming market, COM(2016) 0398 final.

<sup>7</sup> Regulation (EU) 2017/920 of the European Parliament and of the Council of 17 May 2017 amending Regulation (EU) No 531/2012 as regards rules for wholesale roaming markets (OJ L 147, 9.6.2017, p. 1).

<sup>8</sup> Report on the review of the roaming market, COM(2019) 616 final, available [here](#).

<sup>9</sup> See section “Detailed explanation of the specific provisions of the proposal”.

maximum wholesale charges applicable for data, voice and SMS. In line with the policy choice made in Regulation (EU) No 531/2012, the new maximum wholesale charges should act as a safeguard level and should ensure that operators can recover their costs. They should also enable the widespread and sustainable provision of RLAH, while leaving a margin for commercial negotiations between operators. By contrast, the provisions remain largely unchanged on fair use policy and sustainability (Article 6b and 6c of Regulation (EU) No 531/2012) as does the related implementing act (Commission Implementing Regulation (EU) 2016/2286), that will continue to apply, given that the safeguard rules at retail level continue to work adequately. However, reducing the maximum wholesale charges applicable would also improve the situation for end users, since it affects price components that are calculated depending on their level, in particular the ceiling for surcharges under the fair use policy mechanism, the sustainability derogations and the data allowance of the fair use policy on open data bundles and pre-paid limits.

The proposal also brings in new measures on transparency, quality of service and access to emergency communications.

In particular, it includes amendments that aim to ensure a genuine RLAH for end users and to facilitate innovation and access to networks, while establishing a future-proof regulatory framework for consumers and operators. Specifically, the proposal aims to:

- (i) Increase transparency at retail level regarding (a) quality of service (by bringing in an obligation for operators to clarify in their contracts with customers the quality of service that they can reasonably expect when roaming in the EU); (b) communications on value-added services (by obliging operators to provide, in their contracts with customers, information on the type of services that may be subject to higher charges and similar information in the ‘welcome SMS’); (c) access to emergency services (by bringing in an obligation for operators to include information on the different possibilities to access emergency services when roaming in the ‘welcome SMS’).
- (ii) Give roaming customers a genuine RLAH experience in terms of quality of service (by obliging roaming providers to ensure, when technically feasible, that the roaming services are provided under the same conditions as if they were consumed domestically and mobile network operators to provide access to all available network technologies and generations).
- (iii) Increase the level of transparency at wholesale level with regard to value-added-service numbering ranges by creating a centralised EU database for value-added-service numbering ranges. The aim of the database is to provide a tool for transparency enabling NRAs and operators to have direct access to information on which numbering ranges can generate higher costs in the Member States.
- (iv) Ensure free-of-charge access to emergency services to customers while roaming by taking specific measures at wholesale level such as (a) the obligation for operators to provide in the wholesale agreement all regulatory and technical information needed to implement free-of-charge access to emergency services and free-of-charge caller location; (b) the obligation not to levy on the roaming provider any charge related to emergency communications and transmission of caller location information.

Lastly, the proposal lifts regulatory obligations where they are no longer needed and includes several amendments that aim to simplify and reduce the regulatory burden<sup>10</sup>.

- **Consistency with existing provisions in the policy area**

Abolishing retail roaming surcharges marked an essential step towards creating an EU-wide single market, and to making it function properly.

In particular, regulating the roaming market to establish RLAH throughout the EU helped achieve the policy objective of ensuring that well-functioning markets provide access for European consumers to high-performance wireless broadband infrastructure at affordable prices across the EU.

The co-legislators acknowledged the importance of this objective for the overall digital single market when the RLAH rules were adopted in 2015.

Given the above, it is necessary to avoid undermining the achievements made when Regulation (EU) No 531/2012 expires on 30 June 2022. Therefore, the proposal to review the existing roaming rules was included in the 2020 Commission Work Programme under the headline ambition ‘A Europe fit for the Digital Age’ and the specific objective ‘Digital for consumers’.

The proposal complements Directive (EU) 2018/1972 establishing the European Electronic Communications Code (EECC)<sup>11</sup>, which was to be transposed by the Member States by 21 December 2020. In particular, while promoting the sustainable provision of RLAH, cost recovery and maintaining the incentives to invest in visited networks, the proposal complements EECC’s measures that enable high connectivity and 5G deployment for the benefit of all Europeans, while promoting infrastructure competition and enabling operators to secure a return on investment. By promoting a genuine RLAH experience for end users, the proposal complements EECC provisions that provide effective consumer protection in the context of e-communications, boosting their choice by increasing the level of transparency of information and specific rules on maximum contract duration and number portability. The EECC also aims to provide end users with free-of-charge access to emergency services through emergency communications and to ensure that caller location information is available.

The Commission has set as one of its main objectives to respond to the increased needs of the public and of business for connectivity<sup>12</sup> and to benefit from the digital transformation to strengthen the social and economic resilience of the EU and the Member States, their sustainable growth potential and job creation. Gigabit connectivity, powered with secure fibre and 5G infrastructures, is vital to tap Europe’s potential for digital growth. These political objectives, included in the ‘Shaping Europe’s Digital Future’ communication, are also set out in the EU strategy ‘Towards a European Gigabit Society’, in the 5G action plan for Europe and confirmed with the connectivity flagship policy included in the annual sustainable growth strategy 2021<sup>13</sup> and linked to the Recovery and Resilience Facility<sup>14</sup>. To this end, this proposal enables the seamless use of these infrastructures across borders.

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<sup>10</sup> See section on REFIT.

<sup>11</sup> Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast) (OJ L 321, 17.12.2018, p. 36).

<sup>12</sup> Communication on ‘Shaping Europe’s Digital Future’, COM(2020) 67 final.

<sup>13</sup> Communication Annual Sustainable Growth Strategy, COM(2020) 575 final.

- **Consistency with other Union policies**

The aim of the EU roaming rules is to contribute to the smooth functioning of the internal market to achieve a high level of consumer protection and maintain competition among mobile network operators. Although this proposal addresses the regulatory issues that arise from the specific details of EU roaming rules, it also complements other EU policies and laws in several areas.

In particular, the proposal contributes to the creation of a ‘Europe Fit for the Digital Age’ and to the ambition to make the most out of the digital transition to give people greater opportunities to connect, communicate and do business.

The proposal has the objective to ensure that barriers to the single market<sup>15</sup> that were removed when retail roaming surcharges were abolished will not be reinstated. The ‘New Industrial Strategy for Europe’<sup>16</sup> underlines that a strong, integrated single market is both a springboard and a pre-condition for a competitive EU industry. To make the single market work for all, EU law puts in place common rules to remove barriers, facilitate the circulation of goods and services across the EU, and protect consumers.

For example, the proposal complements the cross-border portability of online content<sup>17</sup>. Thanks to these two initiatives, Europeans are now able to travel in the EU without worrying about mobile roaming charges or losing access to music, games, films, entertainment programmes or sports events for which they have already paid. The proposal also facilitates access to European digital culture<sup>18</sup>, learning tools, work platforms and health applications.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

The legal basis for this proposal is Article 114. This is the legal basis for measures adopted under the ordinary legislative procedure that aim to establish or improve the functioning of the internal market, as provided for in Article 26 TFEU.

According to the case-law of the European Court of Justice, the object of measures adopted under Article 114 (ex-Article 95 TEC) must be to improve the conditions for the establishment and functioning of the internal market<sup>19</sup>. The EU legislature may use this legal basis particularly where there are differences between national rules that obstruct the

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<sup>14</sup> Regulation establishing a Recovery and Resilience Facility, COM(2020) 408 final.

<sup>15</sup> The Single Market Barrier Report, COM(2020) 93 final, confirmed that when the single market fails to reach its full potential, SMEs and citizens are the most likely to suffer.

<sup>16</sup> See [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_416](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_416)

<sup>17</sup> Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market (OJ L 168, 30.6.2017, p. 1).

<sup>18</sup> See <https://ec.europa.eu/digital-single-market/en/news/digitalyou-digital-culture>.

<sup>19</sup> Case C-491/01 *British American Tobacco (Investments) and Imperial Tobacco* [2002] ECR I-11453, paragraph 60, and Case C-217/04 *United Kingdom v Parliament and Council* [2006] ECR I-3771, paragraph 42.



fundamental freedoms and thus have a direct effect on the functioning of the internal market<sup>20</sup> or cause significant distortions of competition<sup>21</sup>.

- **Subsidiarity**

For the rules on EU roaming, as part of the internal market policy area and in line with Article 4 (2) of the TFEU, the EU has shared competence with the Member States.

In this sector, only action by the EU is effective as the problems could not be solved at national, regional or local level. EU action is therefore essential to improve the single market for electronic communications.

As observed by the Advocate General in the landmark case C-58/08 Vodafone, the differences in price between calls made within one's own Member State and those made while roaming could reasonably be regarded as discouraging the use of cross-border services such as roaming. Such discouragement of cross-border activities has the potential to impede the establishment of an internal market in which free movement of goods, services and capital is ensured. Indeed, there is no clearer cross-border activity in the mobile telecoms sector than roaming itself<sup>22</sup>.

The fact that services are cross-border justifies action taken at EU level because Member States cannot by themselves address the issue effectively and national regulatory authorities have been unable to autonomously tackle the problems<sup>23</sup>.

In its judgment in the above case C-58/08 Vodafone, the Court of Justice found that, in the past, "the high level of retail charges had been regarded as a persistent problem by NRAs, public authorities and consumer protection associations throughout the Community and that attempts to solve the problem using the existing legal framework had not had the effect of lowering charges"<sup>24</sup>.

The proposal includes measures both at wholesale and at retail level. In the above judgment, the Court of Justice also found that wholesale regulation of the roaming market complies with the subsidiarity (and proportionality) principles given that "the interdependence of retail and wholesale charges for roaming services is considerable, so that any measure seeking to reduce retail charges alone without affecting the level of costs for the wholesale supply of Community-wide roaming services would have been liable to disrupt the smooth functioning of the Community-wide roaming market"<sup>25</sup>.

Similarly, the issues addressed by the new measures included in the proposal are also strictly linked to and affected by the cross-border character of roaming. Therefore they cannot be adequately addressed by the Member States autonomously and action at EU level would be

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<sup>20</sup> Case C-380/03 *Germany v Parliament and Council* [2006] ECR I-11573, paragraph 37 and the case-law cited.

<sup>21</sup> Case C-376/98 *Germany v Parliament and Council* [2000] ECR I-8419, paragraphs 84 and 106.

<sup>22</sup> Opinion of Advocate General Poiares Maduro delivered on 1 October 2009 in Case C-58/08 ECLI:EU:C:2009:596.

<sup>23</sup> As indicated by ERG in a letter sent to the Directorate general of the Commission's DG Information Society, in December 2005.

<sup>24</sup> Judgment of the Court of Justice of 8 June 2010, Vodafone, C-58/08, ECLI:EU:C:2010:321, paragraph 40.

<sup>25</sup> Judgment of the Court of Justice of 8 June 2010, Vodafone, C-58/08, ECLI:EU:C:2010:321, paragraph 77.



more effective than action at national level<sup>26</sup>. As a matter of fact, the underlying problems that the proposal seeks to remedy can potentially result in either discouraging the use of roaming, creating barriers in the use of mobile services and applications while travelling in the single market, or, in general, disrupting the smooth functioning of the EU-wide roaming market. According to the applicable case-law, this is an objective that must be pursued and is best achieved at EU level<sup>27</sup>.

- **Proportionality**

The objective of the EU rules on roaming is to bring in a joint approach to ensure that users of public mobile communications networks, when travelling within the EU, do not pay excessive prices for EU-wide roaming services in comparison with competitive national prices, when making calls and receiving calls, when sending and receiving SMS messages and when using packet switched data communication services. This contributes to the smooth functioning of the internal market while achieving a high level of consumer protection, fostering competition and transparency in the market and offering both incentives for innovation and consumer choice. In addition, this proposal brings in additional measures that aim to remove persisting obstacles to a genuine ‘roam-like-at-home’ experience.

Since these objectives cannot be sufficiently achieved by the Member States in a secure, harmonised and timely manner and can therefore be better achieved at EU level, the EU may adopt measures, in accordance with the principle of subsidiarity set out in Article 5 of the Treaty. In accordance with the principle of proportionality, also set out in that Article, the proposed regulation does not go beyond what is necessary to achieve those objectives.

In particular, the regulation meets the proportionality criterion also because it is provided for a limited time period, as it has an expiry date (30 June 2032, i.e. an overall duration of 10 years).

The 10-year duration of the proposed new rules was chosen considering that a decade is typical duration to widely roll out any new generation of mobile communication and develop new business models. Looking ahead, the Commission does not expect that the competition would change significantly on the market in the following 10 years<sup>28</sup>. The aim of the 10-year duration is also to provide certainty in the market and minimise regulatory burden.

The proposal also includes a flexible approach to revising the maximum wholesale charges, which, if necessary, will be carried out by adopting a delegated act. This would ensure that one of the key aspects of the functioning of the roaming market can be revised on the basis of reliable and updated data. In the case C-58/08 Vodafone, the Court of Justice of the EU recognised that, in the light of the importance of the objective of consumer protection within the context of Article 95(3) EC (now Article 114 TFEU), intervention that is limited in time in a market that is subject to competition, which makes it possible, in the immediate future, to

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<sup>26</sup> A more detailed assessment of the respect of the principle of subsidiarity in the proposed approach is included in the annexed subsidiarity grid accompanying this proposal.

<sup>27</sup> Judgment of the Court of Justice of 8 June 2010, Vodafone, C-58/08, ECLI:EU:C:2010:321, paragraph 76 to 78.

<sup>28</sup> See also the assessment of potential impact on roaming services of technological changes carried out in the study on Technological Developments and Roaming (SMART 2018/0012) available [here](#) and presented in the impact assessment accompanying this proposal.

protect consumers against excessive prices, such as that at issue, even if it might have negative economic consequences for certain operators, is proportionate to the aim pursued. Regulatory obligations on wholesale and retail charges for voice, SMS and data roaming services should be maintained to safeguard consumers as long as competition at the retail or wholesale level is not fully developed.

The impact assessment accompanying this proposal<sup>29</sup> discusses proportionality in detail in Section 7.3 - Coherence and proportionality.

- **Choice of the instrument**

As mentioned above, the proposed new regulation is a recast of Regulation (EU) No 531/2012 that supersedes the multiple acts it contains and makes further amendments. It therefore takes the same legislative form. The review is an opportunity to simplify the current structure and content of Regulation (EU) No 531/2012 with a view to improving coherence and consistency with the regulatory fitness objective.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

The issues addressed by this proposal were identified in the 2019 Commission Review Report. It draws on a broad range of data<sup>30</sup> to evaluate how Regulation (EU) No 531/2012 has performed and how the roaming market functioned after the RLAH rules came into force.

In addition, the backward-looking questions of the public consultation which was held in 2020<sup>31</sup>, and the findings of the joint online surveys by the Commission and the Body of European Regulators for Electronic Communications (BEREC) (in 2018, 2019 and 2020), both complete and complement<sup>32</sup> the conclusions of the Commission Review Report.

The Commission Review Report confirms that, overall, the roaming market functions well under the 'RLAH' rules and that the rules have been a success. The report concludes that, despite signs of some competition dynamics on both the retail and wholesale roaming markets, the underlying basic competition conditions have not changed, and are not likely to change in the foreseeable future to warrant lifting the retail or wholesale regulation of the roaming market.

In addition, the Commission Review Report's findings and other evidence collected as part of the review identified unresolved issues in roaming services, in terms of quality of service, communications to value-added services and access to emergency services. This proposal tackles all these issues in the new measures it proposes.

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<sup>29</sup> Commission staff working document - Impact Assessment Accompanying the Proposal for a Regulation of the European Parliament and of the Council on roaming on public mobile communications networks within the Union (Recast).

<sup>30</sup> See Annex 1 – (Evidence base) and Annex 6 (Evaluation findings) to the impact assessment accompanying this proposal for additional details.

<sup>31</sup> The results of the public consultation are available [here](#).

<sup>32</sup> See also Annex 2 (Stakeholder Consultation) and Annex 6 (Evaluation findings) to the impact assessment accompanying this proposal for additional details.

- **Stakeholder consultations**

This proposal and the accompanying impact assessment were underpinned by a broad consultation of stakeholders. In particular, views were collected from the public and from consumer associations, national regulatory authorities (NRAs), BEREC, mobile network operators (MNOs), mobile virtual network operators (MVNOs), business stakeholders (including SMEs), government authorities, industry associations and from other stakeholders.

The Commission ran a 12-week public consultation from 19 June to 11 September 2020. The purpose of the consultation was to collect views (1) on retail roaming services, in particular on the impact of the potential introduction of clarifications and measures related to quality of service, value-added services and emergency communications in a roaming scenario; (2) on the provision of wholesale roaming services; (3) on the administrative burden linked to Regulation (EU) No 531/2012 and the impact of potential simplification measures. A total of 175 replies were received via the online questionnaire.

Other consultation activities were organised along the following streams, described overleaf under “Collection and use of expertise”:

1. The publication of the inception impact assessment to collect feedback for four weeks<sup>33</sup>.
2. Joint Commission/BEREC online surveys. Market input was collected through annual online surveys of MNOs, MVNOs and NRAs. In June 2018 and March 2019, the surveys collected information on implementation of the fair use policy, the sustainability derogations and other aspects linked to implementing the EU roaming rules. In March 2020, the survey covered other aspects such as quality of service, value-added services, emergency communications, technology changes and machine-to-machine, cost of implementation and administrative burden.
3. BEREC was consulted and provided extensive input, including on forward-looking aspects. Of particular note are BEREC’s formal opinion on the functioning of the roaming market<sup>34</sup>, the supplementary cost analysis<sup>35</sup>, and the additional input to the impact assessment on the Commission’s request<sup>36</sup>. In addition, the Commission took into account BEREC’s consultations and market monitoring reports: the BEREC semi-annual international roaming benchmark reports<sup>37</sup>, based on a dedicated data

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<sup>33</sup> See the web page on Europa Have your say, available [here](#).

<sup>34</sup> BEREC Opinion on the functioning of the roaming market as input to EC evaluation, BoR(19)101, 19 June 2019, available [here](#).

<sup>35</sup> BEREC Supplementary analysis on wholesale roaming costs, BoR(19)168, 20 September 2019, available [here](#).

<sup>36</sup> BEREC input on EC’s request for the preparation of the legislative proposal for the new roaming regulations, BoR (20) 131, of 30 June 2020, available [here](#).

<sup>37</sup> The last five benchmark reports (covering the period from April 2017 to September 2019) can be found in the following links: [20<sup>th</sup> benchmark report](#) (April 2017 to September 2017), [21<sup>st</sup> benchmark report](#) (October 2017 to March 2018), [22<sup>nd</sup> benchmark report](#) (April 2018 to September 2018), [23<sup>rd</sup> benchmark report](#) (October 2018 to March 2019) and [24<sup>th</sup> benchmark reports](#) (April 2019 to September 2019).

collection and the BEREC annual report on the transparency and comparability of roaming tariffs<sup>38</sup>.

4. Targeted interviews on developments of the roaming market as part of the Commission's study entitled 'Technological developments and roaming'<sup>39</sup>. The contractor held several interviews with operators involved in the global connectivity value chain and carried out a targeted online survey on the potential impact of technological change on the roaming market.
5. Flash Eurobarometer Survey<sup>40</sup>, conducted one year after abolishing the roaming charges. It included questions on the use of roaming when travelling in the EU, on the level of awareness among customers about the abolition of roaming charges, the perceived benefits, the perceived costs of roaming among non-travellers and the use of mobile services in other EU countries.

The information and views gathered were taken into account in drafting the impact assessment accompanying this proposal. The data was used to evaluate Regulation (EU) No 531/2012, assess the unresolved problems in a roaming scenario and develop the policy options presented in the impact assessment.

The public consultation confirmed the benefits that the Roaming Regulation aims to bring and the continued need for EU rules on roaming for EU consumers and businesses. The large majority of respondents to the public consultation, in all groups, replied that the EU rules on roaming had significantly promoted the interests of consumers and businesses in the EU/EEA.

#### • Collection and use of expertise

In addition to the above forms of consultation, the Commission analysed independently the data collected by BEREC and carried out the following analysis using that data:

1. The report on the review of the roaming market, and the accompanying Staff Working Document<sup>41</sup> (referred to as the Commission Review Report), collected and presented evidence on how Regulation (EU) No 531/2012 has performed against the expected objectives;
2. The interim report to the European Parliament and the Council on implementation of the 'roam-like-at-home' rules over the first 18 months<sup>42</sup>;

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<sup>38</sup> BEREC Report on Transparency and Comparability of International Roaming Tariffs, available in the following links: for 2017, for 2018 and for 2019.

<sup>39</sup> Technological Developments and Roaming (SMART 2018/0012), see the final report of the study, available [here](#).

<sup>40</sup> [Flash Eurobarometer 468](#) "The end of roaming charges one year later", June 2018.

<sup>41</sup> Report from the Commission to the European Parliament and the Council on the review of the roaming market (COM(2019) 616 final) and Commission Staff Working Document accompanying the Report from the Commission on the review of the roaming market (SWD(2019) 416 final), available [here](#).

<sup>42</sup> Report from the Commission to the European Parliament and the Council on the implementation of 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, as amended by Regulation (EU) 2015/2120 and Regulation (EU) 2017/920 - (COM(2018) 822 final), available [here](#).

3. The Staff Working Document on the findings of the review of the rules on fair use policy and the sustainability derogation<sup>43</sup>.

The Commission also drew on other external expertise in the following work streams:

1. Cost model for assessing the costs of providing wholesale roaming services in the EEA<sup>44</sup>;
2. Commission study on Technological Developments and Roaming<sup>45</sup> conducted between December 2018 and June 2019;
3. The Commission's Joint Research Centre (JRC) analysis. The JRC provided extensive support in preparing the impact assessment, in particular by (a) developing the sustainability model<sup>46</sup> and the counterfactual analysis to assess consumer benefits and by (b) measuring the quality of roaming services, through field tests<sup>47</sup>.

- **Impact assessments**

The impact assessment accompanying this proposal was submitted to the Regulatory Scrutiny Board, which issued a positive opinion on 20 November 2020

Four options were considered:

**Option 1 – Baseline.** This would entail extending beyond 2022 the rules of Regulation (EU) No 531/2012, maintaining its provisions unchanged, both at retail and at wholesale level. In particular, the level of maximum wholesale charges applicable on 30 June 2022 would continue to apply and the two safeguard mechanisms (fair use and sustainability) would also continue. No measures would be taken to remedy the unresolved problems regarding quality of service, value-added services or access to emergency services while roaming.

**Option 2 – Continuity with increased transparency.** This would entail extending beyond 2022 the rules of Regulation (EU) No 531/2012 with clarifications, and taking additional measures to increase transparency and to strengthen competition. The maximum wholesale charges applicable on 30 June 2022 would continue to apply. To ensure a genuine 'roam-like-at-home' experience, it would involve taking measures to increase transparency on the quality of service, value-added services and access to emergency services. Measures would also be taken to ensure compliance with the obligation to provide technology-neutral access (in terms of network technology and generations) for wholesale roaming services and it would achieve a minimum level of simplification and reduction of the administrative burden.

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<sup>43</sup> Commission Staff Working Document on the findings of the review of the rules on roaming fair use policy and the sustainability derogation laid down in Commission Implementing Regulation (EU) 2016/2286 (SWD(2019) 288 final), available [here](#).

<sup>44</sup> Cost Model (SMART 2017/0091), Assessment of the cost of providing mobile telecom services in the EU/EEA countries, available [here](#).

<sup>45</sup> Technological Developments and Roaming (SMART 2018/0012), available [here](#).

<sup>46</sup> The sustainability analysis used data from the 19th to the 25th International Roaming Benchmark Data Report conducted by BEREC. See Annex 4 to the impact assessment accompanying this proposal for additional details.

<sup>47</sup> SMART 2018-011



**Option 3 – Sustainable and genuine RLAH.** As this was the preferred option, the measures proposed under this option are described in detail above<sup>48</sup>.

**Option 4 – Expanded wholesale and retail obligations for an enhanced RLAH experience.** In addition to the measures taken under option 3, this option would increase the sustainability of RLAH and cost recovery at wholesale level. It would apply new obligations on quality of service also on visited operators, to ensure a genuine RLAH experience and on the home operator at wholesale level to request the same quality of service as offered at home, for all wholesale agreements, i.e. no preferred network. It would include an opt-in functionality for customers to receive additional information on the different possibilities to access emergency services. It would also envisage creating a single Union-wide database for value-added services' numbering ranges, including tariff information, to give end users access to information on value-added services' numbering ranges and the applicable charges.

The option to let the current roaming rules expire was **discarded at an early stage**.

On the basis of the analysis carried out in the impact assessment, option 3 is best suited to considerably improve sustainability and would reduce the number of operators with a negative roaming margin exceeding 3% of their domestic margin<sup>49</sup>. It is expected to have a positive impact in terms of benefits for consumers since it reduces the need for operators to request a derogation to apply a surcharge under the sustainability mechanism, thus allowing more end users to fully benefit from RLAH. The aim is to create the preconditions for operators to provide the same quality of service while roaming as domestically and to enable consumers to take full advantage of future technological changes and 5G-driven innovation. It aims to address the lack of clarity at wholesale level on access to emergency services while roaming and provide useful tools to remedy the unresolved problems regarding the use of value-added services when roaming. This option aims to increase consumer awareness (i) of the possibility of being charged high prices when using value-added services, and (ii) about how to access emergency services when roaming. As a result, it can contribute substantially to providing a genuine RLAH experience to customers and have an overall positive social impact. The measures proposed are limited to the aspects that have proved to be insufficiently addressed at national level and for which a harmonised approach is necessary.

By contrast, the measures included under option 1 (baseline) and option 2 were not considered effective in achieving the objectives of the review of the roaming rules.

Lastly, the measures included in option 4 were considered overly intrusive, burdensome and disproportionate. Any potential additional regulatory safeguards under option 4 would not outweigh the complexity of implementing the proposed measures.

- **Regulatory fitness and simplification (REFIT)**

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<sup>48</sup> See the section 'Reasons and objective of the proposal, main amendments and provisions that remain unchanged'.

<sup>49</sup> Bringing in RLAH was complemented by measures aiming to ensure that operators can provide regulated retail roaming services in a sustainable way. A negative roaming margin of 3% is used in the current roaming rules as a threshold justifying a request for sustainability derogation. The derogation, granted by the national regulatory authorities on operator's request, allows operators to apply a small surcharge, capped by the regulation.



The proposal includes the following measures to simplify the rules and reduce the burden:

(i) Revising maximum wholesale charges by adopting a delegated act. This proposal envisages a streamlined procedure to revise the maximum wholesale charges by defining in detail the criteria for setting these charges and by empowering the Commission to subsequently amend them through a delegated act. The aim is to simplify and reduce the regulatory burden for the European Commission, the Council, the European Parliament and, to a lesser degree, BEREC and other stakeholders.

(ii) Repealing the obligation for the separate sale of regulated retail roaming services. The provision obliging operators to provide separate sales of regulated retail roaming services will be repealed, including the related implementing act<sup>50</sup>. This structural measure was tabled with a view to improving competition in the retail roaming market. The reason for repealing this measure is that the provisions became ineffective when the ‘roam-like-at-home’ rules were brought in and it would no longer be proportionate to oblige domestic providers to implement this type of service. Repealing these provisions will have a positive impact on operators by reducing the related maintenance costs and the burden of maintaining (largely obsolete) offers for separate sales of data roaming services.

(iii) Repealing the implementing act on the weighted average of maximum mobile termination rates. Under Regulation (EU) No 531/2012, the surcharge applied in exceptional cases for regulated roaming calls received must not exceed the maximum mobile termination rates across the EU set out in an implementing act adopted every year by the European Commission, based on input provided by BEREC. With the definition of a single maximum EU-wide mobile voice termination rate<sup>51</sup>, this implementing act becomes redundant and the adoption process would be an unnecessary regulatory burden. Therefore, any surcharge applied to regulated roaming calls received should not exceed the single maximum EU-wide mobile voice termination rate. This change would also reduce the burden on BEREC to provide input to the Commission, considering the already extensive reporting and data collection responsibilities it has under Regulation (EU) No 531/2012.

(iv) Aligning the current provisions on how to set the maximum charges in currencies other than the euro. Regulation (EU) No 531/2012 sets out rules that oblige service providers in Member States whose currency is not the euro to annually revise the maximum wholesale charges and retail surcharges for regulated roaming services. The rule applied for intra-EU communications, under Regulation (EU) 2015/2120 as amended by Regulation (EU) 2018/1971, stipulates that the maximum charges in currencies other than the euro must be revised annually and apply from 15 May, using the average of the reference exchange rates published on 15 January, 15 February and 15 March the same year. The proposal is to align the provisions of Regulation (EU) No 531/2012 to the provisions on intra-EU communications defining the same date for revising the surcharge for roaming services (15 May instead of 1 May), and the same method for calculating those currencies. The proposed measure would bring clarity and reduce the administrative burden of operators outside the Eurozone that must publish their tariffs twice when the roaming surcharges or intra-EU communications tariffs are revised. It would also reduce the monitoring burden for NRAs in charge of monitoring the revised exchange rates. This measure is expected to have positive effects at retail level, with retail prices updated once a year, instead of twice, as is

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<sup>50</sup> Commission Implementing Regulation (EU) No 1203/2012 of 14 December 2012 on the separate sale of regulated retail roaming services within the Union (OJ L 347, 15.12.2012, p. 1).

<sup>51</sup> See Article 75 of Directive (EU) 2018/1972.

currently the case. This can considerably reduce the information obligation of operators for amended contract conditions.

(v) Streamlining the monitoring and reporting obligations by BEREC. To reduce the regulatory burden on operators, NRAs and BEREC, the Commission proposes merging and streamlining the monitoring process and BEREC reporting obligations. Streamlining BEREC's reporting process is expected to reduce the administrative burden for operators, for NRAs and for BEREC.

- **Fundamental rights**

The proposal's impact on fundamental rights, such as the freedom to conduct a business, has been analysed. In this regard, taking into account that the proposed caps aim to address a market failure and ensure cost recovery, they do not constitute a disproportionate measure in relation to the objective pursued or an intolerable interference impairing on the very substance of this freedom. The possibility to opt out is also meant to increase parties' freedom to conclude a wholesale agreement.

#### **4. BUDGETARY IMPLICATIONS**

The budgetary implications of this proposal, and the human and administrative resources required, are indicated in detail in the accompanying legislative financial statement.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The proposal will enter into force on 1 July 2022 and its provisions will apply from that day, save as otherwise provided for in specific articles.

In terms of the content of the monitoring and evaluation process, the review clause in Article 21 of this proposal indicates the criteria to assess each measure specific to this initiative.

Article 21 states that there will be two review reports, the first to be submitted by 30 June 2025 and the second by 30 June 2029.

BEREC will continue to play an essential role in collecting data from national regulatory authorities to monitor developments in the roaming market and the impact of implementing the measures on EU roaming. BEREC will also continue to provide the Commission with the opinions needed, including for the review of the existing rules.

- **Detailed explanation of the specific provisions of the proposal**

The proposal amends the current regulation to make the following substantive changes:

**Article 1** defines the subject matter and scope of the regulation. This article amends the previous regulation to bring in the following substantive changes:

- (i) it repeals the reference to provisions to enable the separate sale of regulated roaming services as they become ineffective when the ‘roam-like-at-home’ rules came into force;
- (ii) it repeals the reference to transitory rules on the charges that may be levied by roaming providers as this became obsolete when retail roaming charges were abolished in the EU from 15 June 2017;
- (iii) the reference to the Framework Directive<sup>52</sup> is repealed following the horizontal recast of the regulatory framework for electronic communications by Directive (EU) 2018/1972;
- (iv) it proposes changing the maximum charges denominated in currencies other than euro to align the current provisions to the provisions on intra-EU communications.

**Article 2** on definitions amends the current regulation by repealing two definitions, namely ‘alternative roaming provider’ and ‘separate sale of regulated retail data roaming services’ as they became unnecessary when the provisions to enable the separate sale of regulated roaming services were repealed.

**Article 3** includes provisions on wholesale roaming access, on the reference offer and on terminating wholesale roaming agreements. This article amends the current regulation to bring in the following substantive changes:

- (i) it makes explicit reference to the need that wholesale roaming access must also cover any network technology and generation available and to ensure that the roaming provider is allowed, at least, to replicate in roaming the retail mobile services offered domestically;
- (ii) it specifies that the reference offer must contain all the information needed for roaming providers to provide its customers with free-of-charge access to emergency services through emergency communications and free-of-charge transmission of caller location information when using roaming services.

**Article 5** on the provision of regulated retail roaming services now also includes the explicit obligation of the visiting operator, subject to technical feasibility, to provide regulated retail roaming services under the same conditions as domestically, in particular in terms of quality of service.

**Article 6 and 7** lay down rules on fair use policy and on sustainability derogations, which remain unchanged in substance since the previous regulation. With regard to fair use and the sustainability mechanism, **Article 8** clarifies that Commission Implementing Regulation (EU) 2016/2286 continues to apply until the next implementing regulation is adopted.

**Article 9** regulates the exceptional application of retail surcharges for regulated retail roaming services and the provision of alternative tariffs. This article amends the previous regulation by

<sup>52</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).

- (i) repealing the provision that states that the sum of the domestic retail price and any surcharge applied for regulated roaming calls made, regulated roaming SMS messages sent or regulated data roaming services must not exceed certain set limits. These provisions became redundant when the ‘roam-like-at home’ rules came into play in 15 June 2017, and would have a distorting effect,
- (ii) repealing the provision setting the obligation for the EU to adopt the implementing act on the weighted average of maximum mobile termination rates to set the limit for any surcharge applied for regulated roaming calls received,
- (iii) lastly, this provision regulates specifically the content of a contract including roaming services. It makes an explicit reference to the obligation to provide information on the quality of service that customers can reasonably expect when roaming. In addition, this article amends the previous regulation by making an obligation for roaming providers to ensure that the contract specifies information on the type of services that may be subject to increased charges. The aim of this provision is to increase customer awareness that they may incur high charges if they use value-added services when roaming.

**Articles 10, 11 and 12** on wholesale charges for making regulated roaming calls, wholesale charges for regulated roaming SMS messages and wholesale charges for regulated data roaming services amend the previous rules to bring in new levels of maximum wholesale charges. This ensures that wholesale operators can sustainably provide ‘roam-like-at-home’ services and recover costs.

**Article 13**, which aims to ensure uninterrupted, effective and free-of-charge access to emergency communications, includes a new provision specifying that no charges may be levied on emergency communications initiated by roaming customers.

**Article 14** amends the previous regulation to bring in an obligation to provide customers, through an SMS, with information on the potential risks of increased charges if they use value-added services.

**Article 16** brings in a new obligation for roaming providers to provide information to roaming customers on how to access emergency services in the visited Member State.

**Article 17** includes a new provision mandating BEREC to create and maintain a single Union-wide database for value-added services numbering ranges in the Member States. The aim is to create a transparency tool to give NRAs and operators direct access to information on numbering ranges that can generate higher costs and an intermediate step to increase transparency at retail level.

**Article 21** regulates the review process. The most significant change to the previous rules is to replace the ordinary legislative procedure for the revision of the maximum wholesale charges with an empowerment to the Commission to amend the charges by adopting a delegated act. **Articles 22 and 23** include new provisions laying down detailed criteria and parameters for this delegated act and the conditions under which the Commission may exercise this delegated power.

The proposal repeals Articles 4 and 5 of Regulation (EU) No 531/2012 on the separate sale of regulated retail roaming services and Article 11 of Regulation (EU) No 531/2012 on ‘Technical characteristics of regulated roaming SMS messages’

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**on roaming on public mobile communications networks within the Union (recast)**

(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>53</sup>,

Having regard to the opinion of the Committee of the Regions<sup>54</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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↓ new

- (1) Regulation (EU) No 531/2012 of the European Parliament and of the Council<sup>55</sup> has been substantially amended several times<sup>56</sup>. Since further amendments are to be made, that Regulation should be recast in the interests of clarity.
- (2) In particular, in 2015 the European Parliament and the Council adopted Regulation (EU) 2015/2120<sup>57</sup>, which amended Regulation (EU) No 531/2012 and required retail

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<sup>53</sup> OJ C [...], [...], p. [...].

<sup>54</sup> OJ C [...], [...], p. [...].

<sup>55</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>56</sup> See Annex II.

<sup>57</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).



roaming surcharges to be abolished in the Union from 15 June 2017, subject to fair usage of roaming services and the possibility of applying a sustainability derogation mechanism for the abolition of retail roaming charges, also referred to as ‘roam-like-at-home’ (‘RLAH’). In addition, the Commission undertook a review of the wholesale roaming market, with a view to assessing measures necessary to enable the abolition of retail roaming surcharges, in accordance with Article 19 of Regulation (EU) No 531/2012. As a consequence, Regulation (EU) 2017/920 of the European Parliament and of the Council<sup>58</sup> was adopted on 17 May 2017 with the aim to regulate the functioning of national wholesale roaming markets in order to abolish retail roaming surcharges by 15 June 2017 without distorting the domestic visited and home markets.

- (3) On 29 November 2019, the Commission published its first full review of the roaming market (the “Commission Report”), showing that travellers across the Union have benefited significantly from the abolition of the retail roaming surcharges. The use of mobile services (regulated voice, SMS or data roaming services) while travelling in the Union has increased rapidly and massively, confirming the impact of the Union’s roaming rules. However, it concludes that, despite signs of some competition dynamics in both the retail and wholesale roaming markets, the underlying basic competition conditions have not changed and are not likely to change in the foreseeable future. Therefore the current retail and wholesale regulation is still necessary and cannot be lifted. In particular, the Commission Report found that, at wholesale level, the sharp reduction in price caps has contributed to a further reduction in wholesale roaming prices that has benefited net outbinder operators<sup>59</sup>. The Commission Report took note of the recommendation by the Body of European Regulators for Electronic Communications (BEREC) to further lowering the wholesale roaming price caps. In assessing the impact of this Regulation the Commission has provided the necessary analysis and has documented the need for further lowering the wholesale roaming price caps and assessed the level of reduction that enables visited operators to recover the costs of providing wholesale roaming services. Regarding quality of service, the Commission Report recalls the requirement of Regulation (EU) No 531/2012 that the roaming customer has access to the same service abroad in the EU for the same price, as long as such service can be delivered on the visited network. The Commission Report takes note of the very recent development on new ways of trading wholesale roaming traffic, such as online trading platforms that have the potential to foster competition on the wholesale roaming market and facilitate the negotiation process between operators. It finally observes that the separate sale of data roaming services has not been used by the market.
- (4) As Regulation (EU) No 531/2012 expires on 30 June 2022, the aim of this Regulation is to recast it while introducing new measures to increase transparency, including on the use of value added services in roaming and ensure a genuine RLAH experience in terms of quality of service and access to emergency services while roaming. The duration of this new Regulation is set for 10 years, until 2032, to provide certainty in the market and minimise regulatory burden while introducing a mechanism for intervening at wholesale level in the interim if market developments so require.

<sup>58</sup> Regulation (EU) 2017/920 of the European Parliament and of the Council of 17 May 2017 amending Regulation (EU) No 531/2012 as regards rules for wholesale roaming markets (OJ L 147, 9.6.2017, p. 1).

<sup>59</sup> An outbinder operator has a customer base which consumes more mobile services abroad (i.e. on the networks of partner operators in other EU countries), than those consumed by the partner operators’ customer base on its own network.

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↓ 531/2012 recital 1 (adapted)

~~Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile communications networks within the Community<sup>60</sup> has been substantially amended<sup>61</sup>. Since further amendments are to be made, it should be recast in the interests of clarity~~

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↓ 531/2012 recital 2

~~The objective of reducing the difference between national and roaming tariffs, which was included in the Commission's Benchmarking Framework 2011-2015, endorsed by the i2010 High Level Group in November 2009, and included in the Commission Communication entitled 'A Digital Agenda for Europe', should also remain the goal of this Regulation. The envisaged separate sale of roaming services and domestic services should increase competition and therefore lower the prices for customers and create an internal market for roaming services in the Union with no significant differentiation between national and roaming tariffs. Union wide roaming services can stimulate the development of an internal telecommunications market in the Union.~~

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↓ 531/2012 recital 4

~~The high level of voice, SMS and data roaming prices payable by users of public mobile communication networks, such as students, business travellers and tourists, acts as an obstacle to using their mobile devices when travelling abroad within the Union and is a matter of concern for consumers, national regulatory authorities, and the Union institutions, constituting a significant barrier to the internal market. The excessive retail charges are resulting from high wholesale charges levied by the foreign host network operator and also, in many cases, from high retail mark-ups charged by the customer's own network operator. Due to a lack of competition, reductions in wholesale charges are often not passed on to the retail customer. Although some operators have recently introduced tariff schemes that offer customers more favourable conditions and somewhat lower prices, there is still evidence that the relationship between costs and prices is far from what would prevail in competitive markets.~~

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↓ 531/2012 recital 5

~~High roaming charges constitute an impediment to the Union's efforts to develop into a knowledge based economy and to the realisation of an internal market of 500 million consumers. Mobile data traffic is facilitated by allocating sufficient radio spectrum in order for consumers and businesses to use voice, SMS and data services anywhere in the Union. By providing for the allocation of sufficient and appropriate spectrum in a timely manner to support Union policy objectives and to best meet the increasing demands for wireless data traffic, the multiannual radio spectrum policy programme established by Decision No 243/2012/EU of the European Parliament and of the Council<sup>62</sup> will pave the way for a development that will allow the Union to take the global lead on broadband speeds, mobility,~~

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<sup>60</sup> OJ L 171, 29.6.2007, p. 32.

<sup>61</sup> See Annex I.

<sup>62</sup> Decision No 243/2012/EU of the European Parliament and of the Council of 14 March 2012 establishing a multiannual radio spectrum policy programme (OJ L 81, 21.3.2012, p. 7).

~~coverage and capacity, facilitating the emergence of new business models and technologies, thereby contributing to reducing the structural problems at roaming wholesale level.~~

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↓ 531/2012 recital 7 (adapted)

~~The Commission noted in its Communication entitled ‘On the interim report on the state of development of roaming services within the European Union’ that technological developments and/or the alternatives to roaming services, such as availability of Voice over Internet Protocol (VoIP) or Wi-Fi, may render the internal market for roaming services in the Union more competitive. While these alternatives, in particular VoIP services, are increasingly being used at the domestic level, there have been no significant developments in their use when roaming.~~

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↓ 531/2012 recital 8

~~Given the rapid development of mobile data traffic and the increasing amount of customers using voice, SMS and data roaming services abroad, there is a need to increase the competitive pressure, to develop new business models and technologies. The regulation of roaming charges should be designed in a way that does not discourage competition towards lower price levels.~~

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↓ 531/2012 recital 9

~~The creation of a European social, educational, cultural and entrepreneurial area based on the mobility of individuals and digital data should facilitate communication between people in order to build a real ‘Europe for Citizens’.~~

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↓ 531/2012 recital 14 (adapted)

- (5) ~~In addition,~~ The national regulatory authorities responsible for safeguarding and promoting the interests of mobile customers normally resident within their territory are not able to control the behaviour of the visited network operators, situated in other Member States, on whom those customers depend when using international roaming services. This obstacle could also diminish the effectiveness of measures taken by Member States based on their residual competence to adopt consumer protection rules.
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↓ 2015/2120 recital 20

- (6) The mobile communications market remains fragmented in the Union, with no mobile network covering all Member States. As a consequence, in order to provide mobile communications services to their domestic customers travelling within the Union, roaming providers have to purchase wholesale roaming services from, or exchange wholesale roaming services with, operators in a visited Member State.
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↓ 531/2012 recital 3 (adapted)

- (7) An internal telecommunications market cannot be said to exist while there are ~~significant~~ differences between domestic and roaming prices. Therefore ~~the ultimate aim should be to eliminate~~ the difference between domestic charges and roaming

charges ☒ should be eliminated ☒, thus establishing an internal market for mobile communication services.

↓ 531/2012 recital 20

- (8) A common, harmonised approach should be employed for ensuring that users of terrestrial public mobile communication networks when travelling within the Union do not pay excessive prices for Union-wide roaming services, thereby enhancing competition concerning roaming services between roaming providers, achieving a high level of consumer protection and preserving both incentives for innovation and consumer choice. In view of the cross-border nature of the services concerned, this common approach is needed so that roaming providers can operate within a single coherent regulatory framework based on objectively established criteria.

↓ 531/2012 recital 6

⇒ new

- (9) The widespread use of internet-enabled mobile devices means that data roaming is of great economic significance. This is ~~a decisive criterion~~ ⇒ relevant ⇐ for both users and providers of applications and content. In order to stimulate the development of this market, charges for data transport should not impede growth ⇒, in particular considering that the deployment of 5G networks and services is expected to grow steadily ⇐.

↓ 531/2012 recital 10 (adapted)

⇒ new

- (10) 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)~~<sup>63</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)~~<sup>64</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)~~<sup>65</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)~~<sup>66</sup> and Directive 2002/58/EC of the European Parliament and of the Council ~~of 12 July 2002 concerning the processing of personal data and the protection of privacy in the~~

<sup>63</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>64</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>65</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>66</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).

~~electronic communications sector (Directive on privacy and electronic communications)<sup>67</sup> (hereinafter together referred to as ‘the 2002 regulatory framework for electronic communications’)~~ aim ☒ aimed ☒ to create an internal market for electronic communications within the Union while ensuring a high level of consumer protection through enhanced competition. ⇒ Those Directives were repealed by Directive (EU) 2018/1972 of the European Parliament and of the Council<sup>68</sup>. Directive (EU) 2018/1972 aims to stimulate investment in and take-up of very high capacity networks in the EU as well as to set new spectrum rules for mobile connectivity and 5G. Directive (EU) 2018/1972 also ensures that all citizens have access to affordable communication, including the internet. It increases consumer protection and security for users and facilitates regulatory intervention. ⇐

↓ 531/2012 recital 19 (adapted)

(11) ~~The retail and wholesale roaming markets exhibit unique characteristics which justify exceptional measures which go beyond the mechanisms otherwise available under the 2002 regulatory framework for electronic communications~~ ☒ Directive (EU) 2018/1972 ☒.

↓ 531/2012 recital 24

~~The policy objective laid down in Article 8 of the Framework Directive concerning end users’ ability to access and distribute information or run applications and services of their choice should be promoted by national regulatory authorities.~~

↓ 531/2012 recital 18 (adapted)

(12) This Regulation should ~~therefore~~ allow for a departure from the rules otherwise applicable under the ~~2002 regulatory framework for electronic communications~~ ☒ Directive (EU) 2018/1972 ☒, in particular the Framework Directive, namely that prices for service offerings should ~~in principle~~ be determined by commercial agreement in the absence of significant market power, ~~and to thereby accommodate~~ ☒ accommodating ☒ the introduction of complementary regulatory obligations which reflect the specific characteristics of Union-wide roaming services.

↓ 531/2012 recital 51 (adapted)

⇒ new

(13) ⇒ To protect roaming customers against increasing retail prices for regulated roaming services (regulated voice, SMS or data roaming services) due to fluctuations in the reference exchange rate of currencies other than the euro, a Member State whose currency is not the euro should use an average of several reference exchange rates over time for determining the maximum applicable surcharges in its currency. ⇐ Where maximum charges are not denominated in euro, the applicable ~~initial limits and the revised values of those limits~~ should be determined in the relevant currency by

<sup>67</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

<sup>68</sup> Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36).



applying the  $\Rightarrow$  average of several  $\Leftarrow$  reference exchange rates  $\Rightarrow$  over time  $\Leftarrow$  published in the *Official Journal of the European Union* on the date specified in this Regulation. Where there is no publication on the date specified, the applicable reference exchange rates should be those published in the first *Official Journal of the European Union* following that date and containing such reference exchange rates.  $\Rightarrow$  To align the determination of values in currencies other than the euro with the rule applied for intra-EU communications in accordance with Regulation (EU) 2015/2120, the maximum charges in currencies other than the euro should be determined by applying the average of the reference exchange rates published on 15 January, 15 February and 15 March of the relevant calendar year by the European Central Bank in the *Official Journal of the European Union*. Maximum charges calculated in this way for 2022 should apply from the entry into force of this Regulation until 15 May 2023.  $\Leftarrow$  ~~To protect consumers against increasing retail prices for regulated roaming services (regulated voice, SMS or data roaming services) due to fluctuations in the reference exchange rate of currencies other than the euro, a Member State whose currency is not the euro should use an average of several reference exchange rates over time for determining the maximum retail charges in its currency~~

↓ 531/2012 recital 25 (adapted)  
 $\Rightarrow$  new

- (14) In order to allow for the development of a more efficient, integrated and competitive market for roaming services, there should be no restrictions ~~that prevent~~  $\boxtimes$  preventing  $\boxtimes$  undertakings from effectively negotiating wholesale access for the purpose of providing roaming services. Obstacles to access to such wholesale roaming services, due to differences in negotiating power and in the degree of infrastructure ownership of undertakings, should be removed.  $\Rightarrow$  To that end, wholesale roaming access agreements should respect the principle of technology neutrality and ensure all operators an equal and fair opportunity to accessing all networks and technologies available and be negotiated in good faith allowing the roaming provider to offer retail roaming services equivalent to the services offered domestically.  $\Leftarrow$  Mobile virtual network operators (MVNOs) and resellers of mobile communication services without their own network infrastructure typically provide roaming services based on commercial wholesale roaming agreements with their host mobile network operators in the same Member State. Commercial negotiations, however, may not leave enough margin to MVNOs and resellers for stimulating competition through lower prices. The removal of those obstacles and balancing the negotiation power between MVNOs/resellers and mobile network operators by an access obligation and wholesale caps should facilitate the development of alternative, innovative and Union-wide roaming services and offers for customers. ~~The rules of the 2002 regulatory framework for electronic communications~~  $\boxtimes$  Directive (EU) 2018/1972  $\boxtimes$  ~~in particular of the Framework Directive and Access Directive,~~  $\boxtimes$  does not provide for a solution to this problem  $\boxtimes$  ~~do not allow this problem to be addressed~~ via the imposition of obligations on operators with significant market powers.

↓ 531/2012 recital 26 (adapted)  
 $\Rightarrow$  new

- (15) Therefore ~~rules should be introduced to lay down the~~  $\boxtimes$  an  $\boxtimes$  obligation to meet reasonable requests for wholesale access to public mobile communications networks



for the purpose of providing roaming services ☒ should be laid down ☒ . Such access should be in line with the needs of those seeking access. ☐ End-users of services requiring modern technologies and retail roaming services should be able to enjoy the same quality of service when roaming as domestically. A wholesale roaming access obligation should therefore ensure that access seekers can replicate the retail services offered domestically, unless mobile network operators requested to provide access can prove that it is technically unfeasible to do so. ☐ Access should be refused only on the basis of objective criteria, such as technical feasibility and the need to maintain network integrity. Where access is refused, the aggrieved party should be able to submit the case for dispute resolution in accordance with the procedure set out in this Regulation. In order to ensure a level playing field, wholesale access for the purpose of providing roaming services should be granted in accordance with the regulatory obligations laid down in this Regulation applicable at the wholesale level and should take into account the different cost elements necessary for the provision of such access. A consistent regulatory approach to the wholesale access for the provision of roaming services should contribute to avoiding distortions between Member States. BEREC should, in coordination with the Commission and in collaboration with the relevant stakeholders, issue guidelines for wholesale access for the purpose of providing roaming services.

↓ 531/2012 recital 27

- (16) A wholesale roaming access obligation should include the provision of direct wholesale roaming services as well as the provision of roaming services on a wholesale basis for resale by third parties. The wholesale roaming access obligation should also cover mobile network operator's obligation to enable MVNOs and resellers to purchase regulated wholesale roaming services from wholesale aggregators which provide a single point of access and a standardised platform to roaming agreements all over the Union. In order to ensure that operators provide access to all facilities necessary for direct wholesale roaming access and wholesale roaming resale access to roaming providers within a reasonable period of time, a reference offer should be published containing the standard conditions for direct wholesale roaming access and wholesale roaming resale access. The publication of the reference offer should not prevent commercial negotiations between access seeker and access provider on the price level of the final wholesale agreement or on additional wholesale access services that go beyond those necessary for direct wholesale roaming access and wholesale roaming resale access.

↓ 531/2012 recital 28

- (17) A wholesale roaming access obligation should cover access to all the components necessary to enable the provision of roaming services, such as: network elements and associated facilities; relevant software systems including operational support systems; information systems or databases for pre-ordering, provisioning, ordering, maintaining and repair requests, and billing; number translation or systems offering equivalent functionality; mobile networks and virtual network services.

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↓ 531/2012 recital 29

- (18) If access seekers for wholesale roaming resale request access to facilities or services in addition to what is necessary for the provision of retail roaming services, mobile network operators may recover fair and reasonable charges for those facilities or services. Those additional facilities or services could, inter alia, be value-added services, additional software and information systems or billing arrangements.
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↓ new

- (19) In accordance with Article 109 of Directive (EU) 2018/1972, all end-users should have access to emergency services, free of charge, through emergency communications to the most appropriate public safety answering point (PSAP). Member States are also required to ensure that access for end-users with disabilities to emergency services is available through emergency communications and is equivalent to that enjoyed by other end-users. It is for the Member States to determine the type of emergency communications that are technically feasible to ensure roaming customers access to emergency services. In order to ensure that roaming customers have access to emergency communications under the conditions laid down in Article 109 of Directive (EU) 2018/1972, visited network operators should inform the roaming provider through the wholesale roaming agreement about what type of emergency communications are mandated under national measures in the visited Member State. In addition, wholesale roaming agreements should include information on the technical parameters for ensuring access to emergency services, including for roaming customers with disabilities, as well as for ensuring the transmission of caller location information to the most appropriate PSAP in the visited Member State. Such information should allow the roaming provider to identify and provide the emergency communication and the transmission of caller location free of charge.
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↓ 2017/920 recital 12 (adapted)

- (20) ~~The~~ ☒ Certain ☒ 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 access ~~should be clarified~~. In particular, where the visited network operator has reasonable grounds for considering 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, it should be able to require the roaming provider to provide, in an aggregated manner and in full compliance with Union and national data protection requirements, information allowing the determination of whether a significant share of the roaming provider's customers is in a situation of permanent roaming or whether there is anomalous or abusive use of wholesale roaming access, such as information on 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 access should be effected only where less stringent measures have failed to address the situation. Such termination should be subject to prior authorisation by the national regulatory authority of the visited network operator, taking the utmost account of the opinion of ~~the Body of European Regulators for Electronic Communications (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 agreement. Such higher wholesale charges should be set 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 a commitment by the home network operator to adopt or revise the fair use policies applicable to its customers in accordance with the detailed rules adopted pursuant to Article ~~6d~~ 8 of ~~ⓧ~~ this ~~ⓧ~~ Regulation ~~(EU) No 531/2012~~, or the possibility for the visited network operator to request that the wholesale roaming agreement be revised. In the interests of transparency, the national regulatory authority should make information concerning requests for authorisation to terminate wholesale roaming agreements available to the public, subject to business confidentiality.

↓ 2017/920 recital 11 (adapted)  
⇒ new

- (21) In order to allow for the development of more efficient, integrated and competitive markets for roaming services, when negotiating wholesale roaming access for the purpose of providing retail roaming services, operators should be given the ~~alternative~~ ~~ⓧ~~ possibility ~~ⓧ~~ to negotiate innovative wholesale pricing schemes which are not directly linked to volumes actually consumed, such as flat payments, upfront commitments or capacity-based contracts, or pricing schemes that reflect variations of demand across the year. ⇒ Machine-to-machine communications, referred to in recital 249 of Directive (EU) 2018/1972, are not excluded from the scope of this Regulation and the relevant wholesale roaming access obligations. However, agreements on permanent roaming are subject to commercial negotiations and can be agreed by two roaming partners in the wholesale roaming contract. In order to allow the development of more efficient and competitive markets for machine-to-machine communications, it is expected that operators will increasingly respond to and accept all reasonable requests for roaming agreements on reasonable terms and explicitly allowing permanent roaming for machine-to-machine. They should be able to establish flexible roaming agreements enabling wholesale roaming services and to apply tariff schemes which are not based on the volume of consumed data but on alternative schemes, for example on the number of connected machines per month. In that context, in the event of a cross-border dispute, the parties involved should have recourse to the dispute resolution procedure laid down in Article 27 of Directive (EU) 2018/1972. ⇐ The negotiating parties should ~~therefore~~ have the option of agreeing not to apply maximum regulated wholesale roaming charges for the duration of wholesale roaming agreements. ~~This~~ ~~ⓧ~~ That ~~ⓧ~~ would exclude the possibility for either party to subsequently request the application of volume based maximum wholesale charges to actual consumption, as set out in ~~ⓧ~~ this ~~ⓧ~~ Regulation ~~(EU) No 531/2012~~. This ~~alternative~~ should be without prejudice to obligations as regards the provision of regulated retail roaming services ~~in accordance with that Regulation~~. ⇒ Furthermore, the Commission Report takes note of the very recent development of new ways of trading wholesale roaming traffic, such as online trading platforms, that have the potential to facilitate the negotiation process between operators. The use of similar

instruments could contribute to enhancing competition in the wholesale roaming market and drive further down actual wholesale rates charged. ↩

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↓ new

(22) Regulation (EU) No 531/2012 provides that end-users are not to be prevented by operators from accessing regulated data roaming services on a visited network offered by an alternative roaming provider. However, this structural measure, introduced by way of the obligation for the separate sale of data roaming services, has become ineffective following the introduction of RLAH. In addition, due to the lack of actual uptake in the market, this obligation no longer appears to be relevant. Therefore, the provisions obliging operators to provide separate sales of roaming data services at retail level should no longer apply.

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↓ 531/2012 recital 31 (adapted)

~~Consumer and business demand for mobile data services has increased significantly in recent years. However, due to high data roaming charges, the use of those services is severely constrained for consumers and businesses operating across borders in the Union. Given the infancy of the market and the rapidly increasing consumer demand for data roaming, regulated retail charges might only keep prices around the proposed maximum charges themselves, as experienced in relation to Regulation (EC) No 717/2007, instead of pushing them down further, which therefore confirms the need for further structural measures.~~

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↓ 531/2012 recital 32

~~Customers should be able to switch easily, within the shortest possible time depending on the technical solution, without penalty and free of charge to an alternative roaming provider or between alternative roaming providers. Customers should be informed in a clear, understandable and easily accessible form about this possibility.~~

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↓ 531/2012 recital 33

~~Consumers should have the right to opt, in a consumer-friendly way, for the separate sale of roaming services from their domestic mobile package. There are currently several ways in which the separate sale of regulated retail roaming services could be technically implemented, including dual International Mobile Subscriber Identity (IMSI) (two separate IMSI on the same SIM card), single IMSI (the sharing of one IMSI between the domestic and roaming providers) and combinations of dual or single IMSI together with the technical modality that does not prevent the customer from accessing regulated data roaming services provided directly on a visited network, by means of arrangements between the home network operator and the visited network operator.~~

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↓ 531/2012 recital 34

~~High data roaming prices are deterring customers from using mobile data services when travelling in the Union. Given the increasing demand and importance of data roaming services, there should be no obstacles to using alternative data roaming services, provided directly on a visited network, temporarily or permanently, regardless of existing roaming~~

~~contracts or arrangements with domestic providers and without any additional charge levied by them. When it is required, in order to offer data roaming services, provided directly on a visited network, domestic providers and providers of data roaming services should collaborate in order not to prevent customers from accessing and using those services and to ensure service continuity of other roaming services.~~

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↓ 531/2012 recital 35

~~While this Regulation should not lay down any particular technical modalities for the separate sale of roaming services, but instead pave the way for the most effective and efficient solution, including a combined solution, to be developed by the Commission based on input from BEREC, criteria should be laid down with regard to the technical characteristics which should be met by the technical solution for the separate sale of roaming services. Those criteria should include, inter alia, the introduction of the solution in a coordinated and harmonised manner across the Union and should ensure that consumers are able to quickly and easily choose a different provider for roaming services without changing their number. Furthermore, roaming outside the Union or by third-country customers inside the Union should not be impeded.~~

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↓ 531/2012 recital 36

~~Increased cooperation and coordination among mobile network operators should be established to technically enable a coordinated and sound technical evolution of the provision of separate roaming services, and not preventing access to data roaming services provided directly on a visited network. Therefore, the relevant basic principles and methodologies should be elaborated, in order to allow a rapid adaptation to changed circumstances and technological advancement. BEREC should, in collaboration with the relevant stakeholders, assist the Commission to develop technical elements in order to enable the separate sale of roaming services and in order not to prevent access to data roaming services provided directly on a visited network. If necessary, the Commission should give a mandate to a European standardisation body for the amendment of the relevant standards that are necessary for the harmonised implementation of the separate sale of regulated retail roaming services.~~

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↓ 531/2012 recital 37 (adapted)

~~In order to ensure uniform conditions for the implementation of the provisions of this Regulation, implementing powers should be conferred on the Commission in respect of detailed rules on information obligations of domestic providers and on a technical solution for the separate sale of roaming services. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers<sup>69</sup>.~~

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↓ 531/2012 recital 38

~~BEREC should be allowed, taking into account this Regulation and the implementing acts adopted pursuant hereto, to provide on its own initiative specific technical guidance on the~~

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<sup>69</sup> OJ L 55, 28.2.2011, p. 13.

~~separate sale of regulated retail roaming services or on other matters covered by this Regulation.~~

↓ 531/2012 recital 39

~~It is considered that, for the separate sale of regulated retail roaming services to be fully effective, such sale needs to be combined with the wholesale access obligation for the provision of roaming services to facilitate market entry by new or existing players including cross-border roaming services providers. That solution would avoid distortions between Member States by ensuring a consistent regulatory approach thereby contributing to the development of the internal market. However, the implementation of the separate sale of regulated retail roaming services will require a reasonable period for operators to adapt at the technical level, and therefore the structural measures will only result in a genuine internal market with sufficient competition after a certain period of time. For this reason, maximum wholesale charges for voice, SMS and data roaming services as well as safeguard caps for those services at the retail level should be maintained on a temporary basis at an appropriate level to ensure that the existing consumer benefits are preserved during a transitional period of implementation of such structural measures.~~

↓ 2015/2120 recital 32 (adapted)  
⇒ new

- (23) In order to ensure uniform conditions for the implementation of ~~the provisions of this Regulation,~~ implementing powers should be conferred on the Commission in respect of setting out ~~the weighted average of maximum mobile termination rates, and~~ detailed rules on the application of the fair use policy and on the methodology for assessing the sustainability ⇒ of the provision of retail roaming services at domestic prices ⇐ ~~of the abolition of retail roaming surcharges,~~ as well as on the application to be submitted by a roaming provider for the purposes of that assessment. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>70</sup>.

↓ new

- (24) Until the adoption of those implementing measures, Commission Implementing Regulation (EU) 2016/2286<sup>71</sup> should continue to apply.

↓ 531/2012 recital 40 (adapted)

- (25) ~~With regard to the continuation of temporary price regulation, #~~Regulatory obligations should be imposed at both retail and wholesale levels to protect the interests of roaming customers, since experience has shown that reductions in wholesale prices for Union-wide roaming services may not be reflected in lower retail prices for roaming

<sup>70</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

<sup>71</sup> Commission Implementing Regulation (EU) 2016/2286 of 15 December 2016 laying down detailed rules on the application of fair use policy and on the methodology for assessing the sustainability of the abolition of retail roaming surcharges and on the application to be submitted by a roaming provider for the purposes of that assessment (OJ L 344, 17.12.2016, p. 46).



owing to the absence of incentives for this to happen. On the other hand, action to reduce the level of retail prices without addressing the level of the wholesale costs associated with the provision of ~~these~~ ☒ those ☒ services could risk disrupting the orderly functioning of the internal market for roaming services and would not allow a higher degree of competition.

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↓ 2017/920 recital 4 (adapted)

- (26) The abolition of retail roaming surcharges ~~set up by~~ ☒ in accordance with ☒ Regulation (EU) 2015/2120, ~~also referred to as ‘roam-like-at-home’ (RLAH), is~~ ☒ was ☒ necessary to establish and ease the functioning of a digital single market across the Union. However, that Regulation alone ☒ was ☒ ~~is~~ not sufficient to ensure the proper 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.

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↓ 2015/2120 recital 26

- (27) The relevant domestic retail price should be equal to the domestic retail per-unit charge. However, in situations where there are no specific domestic retail prices that could be used as a basis for a regulated retail roaming service (for example, in case of domestic unlimited tariff plans, bundles or domestic tariffs which do not include data), the domestic retail price should be deemed to be the same charging mechanism as if the customer were consuming the domestic tariff plan in that customer’s Member State.

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↓ new

- (28) Roaming customers should, to the greatest extent possible, be able to use the retail services that they subscribe to and benefit from the same level of quality of service as at home, when roaming in the Union. To that end, roaming providers should take the necessary measures to ensure that regulated retail roaming services are provided under the same conditions as if such services were consumed domestically. In particular, the same quality of service should be offered to customers when roaming, if technically feasible.

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↓ 2015/2120 recital 22 (adapted)

⇒ new

- (29) ~~At the same time, R~~Roaming providers should be able to apply a ‘fair use policy’ to the consumption of regulated retail roaming services provided at the applicable domestic retail price. The ‘fair use policy’ is intended to prevent abusive or anomalous usage of regulated retail roaming services by roaming customers, such as the use of such services by roaming customers in a Member State other than that of their domestic provider for purposes other than periodic travel. ⇒ Roaming providers should, in cases of force majeure caused by circumstances such as pandemics or natural catastrophes which involuntarily extend the period of temporary stay of the roaming customer in another Member State, consider extending the applicable fair use allowance for an appropriate period, upon a justified request by the roaming customer ⇐. Any fair use policy should enable the roaming provider’s customers to consume volumes of

regulated retail roaming services at the applicable domestic retail price that are consistent with their respective tariff plans.

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↓ 2015/2120 recital 23

- (30) In specific and exceptional circumstances where a roaming provider is not able to recover its overall actual and projected costs of providing regulated retail roaming services from its overall actual and projected revenues from the provision of such services, that roaming provider should be able to apply for authorisation to apply a surcharge with a view to ensuring the sustainability of its domestic charging model. The assessment of the sustainability of the domestic charging model should be based on relevant objective factors specific to the roaming provider, including objective variations between roaming providers in the Member State concerned and the level of domestic prices and revenues. That may, for example, be the case for flat-rate domestic retail models of operators with significant negative traffic imbalances, where the implicit domestic unit price is low and the operator's overall revenues are also low relative to the roaming cost burden, or where the implicit unit price is low and actual or projected roaming services consumption is high. ~~Once both wholesale and retail roaming markets have fully adjusted to the generalisation of roaming at domestic price levels and its incorporation as a normal feature of retail tariff plans, such exceptional circumstances are no longer expected to arise.~~ In order to avoid the domestic charging model of roaming providers being rendered unsustainable by such cost recovery problems, generating a risk of an appreciable effect on the evolution of domestic prices or so-called 'waterbed effect', roaming providers, upon authorisation by the national regulatory authority, should, in such circumstances, be able to apply a surcharge to regulated retail roaming services only to the extent necessary to recover all relevant costs of providing such services.
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↓ 2015/2120 recital 24

- (31) To that end, the costs incurred in order to provide regulated retail roaming services should be determined by reference to the effective wholesale roaming charges applied to the outbound roaming traffic of the roaming provider concerned in excess of its inbound roaming traffic, as well as by reference to reasonable provision for joint and common costs. Revenues from regulated retail roaming services should be determined by reference to revenues at domestic price levels attributable to the consumption of regulated retail roaming services, whether on a unit-price basis or as a proportion of a flat fee, reflecting the respective actual and projected proportions of regulated retail roaming services consumption by customers within the Union and domestic consumption. Account should also be taken of the consumption of regulated retail roaming services and domestic consumption by the roaming provider's customers, and of the level of competition, prices and revenues in the domestic market, and any observable risk that roaming at domestic retail prices would appreciably affect the evolution of such prices.
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↓ new

- (32) Regulation (EU) No 531/2012 provides that, where a roaming provider applies a surcharge for the consumption of regulated retail roaming services in excess of any limits under any fair use policy, the sum of the domestic retail price and any surcharge

applied for regulated roaming calls made, regulated roaming SMS messages sent or regulated data roaming services are not to exceed EUR 0,19 per minute, EUR 0,06 per SMS message and EUR 0,20 per megabyte used, respectively. Given the effective functioning of RLAH rules since 15 June 2017, that provision is no longer necessary.

↓ 2015/2120 recital 28 (adapted)  
⇒ new

- ~~(33)~~ In accordance with the principle that the calling party pays, mobile customers do not pay for receiving domestic mobile calls and 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 the same principle to be applied to regulated retail roaming calls. ⇒ Pursuant to Article 75(1) of Directive (EU) 2018/1972, the Commission has established, by means of the delegated act adopted on 18 December 2020, a single maximum Union-wide voice termination rate for mobile services in order to reduce the regulatory burden in addressing the competition problems relating to wholesale voice termination consistently across the Union. The delegated act includes a three-year glide path: the maximum mobile voice termination rates is to be EUR 0.7 cent in 2021, EUR 0.55 cent in 2022, EUR 0.4 cent in 2023 and reaching the single maximum Union-wide mobile voice termination rate of EUR 0.2 cent from 2024 onwards. ⇐ ~~However, since this is not yet the case, in~~ In situations set out in this Regulation where roaming providers are allowed to apply a surcharge for regulated retail roaming services, the surcharge applied for regulated roaming calls received should not exceed ~~the weighted average of the maximum wholesale mobile termination rates set across the Union~~ ⇒ the single maximum Union-wide mobile voice termination rate set by the Commission for the respective and corresponding year in the delegated act provided for in Article 75 of Directive (EU) 2018/1972. If the Commission, subsequently concludes that it is not longer necessary to set a Union-wide voice termination rate, any surcharge applied for regulated roaming calls received should not exceed the rate set by the latest delegated act adopted under Article 75 of Directive (EU) 2018/1972 ⇐. ~~This is considered to be a transitional regime until the Commission addresses this outstanding issue.~~

↓ 2015/2120 recital 30 (adapted)  
⇒ new

- ~~(34)~~ ~~This Regulation should constitute a specific measure within the meaning of Article 1(5) of Directive 2002/21/EC. Therefore, Where~~ providers of Union-wide regulated roaming services make changes to their retail roaming tariffs and to accompanying roaming usage policies in order to comply with the requirements of this Regulation, such changes should not trigger for mobile customers any right under national laws transposing ☒ Directive (EU) 2018/1972 ☒ ~~the regulatory framework for electronic communications networks and services~~ to withdraw from their contracts.

↓ new

- (35) A contract which includes any type of regulated retail roaming service should specify the characteristics of that regulated retail roaming service, including the expected level of quality of service. The provider should make available information on relevant

factors that can affect the quality of service, such as availability of certain technologies, coverage or variation due to external factors such as topography.

- (36) Roaming customers and home operators sometimes unwittingly incur large bills as a result of the lack of transparency on the numbers used for value added services across the Union and on the wholesale prices charged for value added services. Communications to certain numbers which are used for providing value added services, for example, premium-rate numbers, freephone numbers or shared cost numbers, are subject to particular pricing conditions at the national level. This Regulation should not apply to the part of the tariff that is charged for the provision of value added services but only to the tariffs for the connection to such services. Nevertheless, the RLAH principle might create an expectation for end-users that communications to such numbers while roaming should not incur any increased cost in comparison to the domestic situation. However, this is not always the case when roaming. End-users are confronted with increased costs, even when they call numbers that are free when called domestically. This could erode customers' confidence in using their phones when roaming and could result in bill shocks, thus having a negative impact on a genuine RLAH experience. This is mainly caused, at retail level by the insufficient level of transparency on the higher charges which can be incurred because of communications to value added services numbers. Therefore measures should be introduced to increase the transparency on the conditions for communications to value added services numbers. To that end, roaming customers should be informed in their contract and notified and warned, in a timely manner and free of charge, that communications to value added services numbers in roaming can entail additional charges.

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↓ 2017/920 recital 9

- (37) The functioning of wholesale roaming markets should allow operators to 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.

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↓ 2017/920 recital 13

- (38) 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 wholesale roaming 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.

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↓ 2017/920 recital 14

- (39) Maximum wholesale charges should act as a safeguard level and should ensure that operators can recover their costs, including joint and common costs. They should also

enable the widespread sustainable provision of RLAH, while at the same time leaving a margin for commercial negotiations between operators.

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↓ 531/2012 recital 52 (adapted)

- (40) The practice by some mobile network operators of billing for the provision of wholesale roaming calls on the basis of minimum charging periods of up to 60 seconds, as opposed to the per-second basis normally applied for other wholesale interconnection charges, creates a distortion of competition between those operators and those applying different billing methods, and undermines the consistent application of the maximum wholesale charges ~~introduced by~~ ☒ laid down in ☒ this Regulation. Moreover it represents an additional charge which, by increasing wholesale costs, has negative consequences for the pricing of voice roaming services at retail level. Mobile network operators should therefore be required to bill for the wholesale provision of regulated roaming calls on a per-second basis.
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↓ 531/2012 recital 64

- (41) In order to ensure that the maximum charges for wholesale roaming SMS services are closer to levels reflecting underlying costs of provision and that competition can develop at the retail level, the maximum wholesale charges for regulated SMS should follow subsequent reductions.
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↓ 531/2012 recital 11 (adapted)

~~Regulation (EC) No 717/2007 is not an isolated measure, but complements and supports, insofar as Union-wide roaming is concerned, the rules provided for by the 2002 regulatory framework for electronic communications. That framework has not provided national regulatory authorities with sufficient tools to take effective and decisive action with regard to the pricing of roaming services within the Union and thus fails to ensure the smooth functioning of the internal market for roaming services. Regulation (EC) No 717/2007 was an appropriate means of correcting this situation.~~

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↓ new

- (42) To ensure that roaming customers have uninterrupted and effective access to emergency services, free of charge, visited networks should not levy any wholesale charge related to such emergency communications on the roaming providers.
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↓ 531/2012 recital 82

⇒ new

- (43) In order to improve the transparency of retail prices for roaming services and to help roaming customers make decisions on the use of their mobile devices while abroad, providers of mobile communication services should supply their roaming customers with information free of charge on the roaming charges applicable to them when using roaming services in a visited Member State. Since certain customer groups might be well informed about roaming charges, roaming providers should provide a possibility to easily opt-out from this automatic message service. ⇒ In addition, roaming customers should be provided with a text message including a link to a web page

giving detailed information about the types of services (calls and SMS) that may be subject to increased costs.↵ Moreover, providers should actively give their customers, provided that the latter are located in the Union, on request and free of charge, additional information on the per-minute, per-SMS or per-megabyte data charges (including VAT) for the making or receiving of voice calls and also for the sending and receiving of SMS, MMS and other data communication services in the visited Member State.

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↓ 2015/2120 recital 31 (adapted)

- (44) ~~In order to strengthen the rights of roaming customers laid down in Regulation (EU) No 531/2012, This Regulation should in relation to regulated retail roaming services lay down specific transparency requirements aligned with the specific tariff and volume conditions to be applied once~~ ☒ applicable following the abolition of the ☒ retail roaming surcharges ~~are abolished~~. In particular, provision should be made for roaming customers to be notified, in a timely manner and free of charge, of the applicable fair use policy, when the applicable fair use volume of regulated voice, SMS or data roaming services is fully consumed, of any surcharge, and of accumulated consumption of regulated data roaming services.
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↓ 531/2012 recital 58

- (45) Customers living in border regions should not receive unnecessarily high bills due to inadvertent roaming. Roaming providers should therefore take reasonable steps to protect customers against incurring roaming charges while they are located in their Member State. This should include adequate information measures in order to empower customers to actively prevent such instances of inadvertent roaming. National regulatory authorities should be alert to situations in which customers face problems with paying roaming charges while they are still located in their Member State and should take appropriate steps to mitigate the problem.
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↓ 531/2012 recital 84 (adapted)

- (46) Moreover, measures should be ~~introduced~~ ☒ laid down ☒ to ~~improve~~ ☒ ensure ☒ the transparency of retail charges for all data roaming services, in particular to eliminate the problem of ‘bill shock’ which constitutes a barrier to the smooth functioning of the internal market, and to provide roaming customers with the tools they need to monitor and control their expenditure on data roaming services. Equally, there should be no obstacles to the emergence of applications or technologies which can be a substitute for, or alternative to, roaming services, ☒ including but not limited to ☒ ~~such as~~ Wi-Fi.
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↓ 531/2012 recital 87 (adapted)

- (47) In addition, in order to avoid bill shocks, roaming providers should define one or more maximum financial and/or volume limits for their outstanding charges for data roaming services, expressed in the currency in which the roaming customer is billed, and which they should offer to all their roaming customers, free of charge, with an appropriate notification, in a media format that can be consulted again subsequently, when ~~this~~ ☒ that ☒ limit is being approached. Upon reaching ~~this~~ ☒ that ☒



maximum limit, customers should no longer receive or be charged for those services unless they specifically request continued provision of those services in accordance with the terms and conditions set out in the notification. In such a case, they should receive free confirmation, in a media format that can be consulted again subsequently. Roaming customers should be given the opportunity to opt for any of ~~these~~ ☒ those ☒ maximum financial or volume limits within a reasonable period or to choose not to have such a limit. Unless customers state otherwise, they should be put on a default limit system.

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↓ 531/2012 recital 88

~~(48) These transparency measures should be seen as minimum safeguards for roaming customers, and should not preclude roaming providers from offering their customers a range of other facilities which help them to predict and control their expenditure on data roaming services. For example, many roaming providers are developing new retail flat rate roaming offers which permit data roaming for a specified price over a specified period up to a 'fair use' volume limit. Likewise roaming providers are developing systems to enable their roaming customers to be updated on a real time basis on their accumulated outstanding data roaming charges. To ensure the smooth functioning of the internal market, these developments on the domestic markets should be reflected in the harmonised rules.~~

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↓ 531/2012 recital 89 (adapted)

(49) Customers under pre-paid tariffs may also suffer from bill shocks for the use of data roaming services. For ~~this~~ ☒ that ☒ reason the provisions on the cut-off limit should also apply to those customers.

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↓ 531/2012 recital 90 (adapted)  
⇒ new

(50) There are considerable disparities between regulated roaming tariffs within the Union and roaming tariffs incurred by customers when they are travelling outside the Union, which are significantly higher than prices within the Union, ☒ where roaming surcharges are only exceptionally applied following the abolition of retail roaming charges ☒. Due to the absence of a consistent approach to transparency and safeguard measures concerning roaming outside the Union, consumers are not confident about their rights and are therefore often deterred from using mobile services while abroad. Transparent information provided to consumers could not only assist them in the decision as to how to use their mobile devices while travelling abroad (both within and outside the Union), but could also assist them in the choice between roaming providers. It is therefore necessary to address the problem of the lack of transparency and consumer protection by applying certain transparency and safeguard measures also to roaming services provided outside the Union. Those measures ~~would~~ ☒ should ☒ facilitate competition and improve the functioning of the internal market.

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↓ 531/2012 recital 91 (adapted)

- (51) If the visited network operator in the visited ☒ third ☒ country ~~outside the Union~~ does not allow the roaming provider to monitor its customers' usage on a real-time basis, the roaming provider should not be obliged to provide the maximum financial or volume limits for safeguarding customers.
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↓ new

- (52) Roaming providers should inform roaming customers of the possibility to access emergency services free of charge by calling the single European emergency number '112' and by alternative means of access through emergency communications. Alternative means of access through emergency communications enable roaming customers, in particular roaming customers living with a disability, to access emergency services through other means than calls. For example, alternative means of access may be ensured through emergency applications, messaging, relay services or through real time text or total conversation implemented pursuant to Article 4 of Directive (EU) 2019/882 of the European Parliament and of the Council<sup>72</sup>.
- (53) Number ranges, including those used for value added services, are set in the national numbering plans and are not harmonised at Union level. Operators may therefore not be able to recognise the numbering ranges for value added services in all countries in advance. Numbering ranges used for value added services are subject to particular pricing conditions at the national level and in many cases their termination rates are not regulated. While this is understood to roaming providers, the level of the wholesale charges they will incur may still be unexpectedly high. In a roaming scenario, operators are unable to address this issue, because they lack information on number ranges used for value added services throughout the Union. To address this problem BEREC should establish and maintain a single Union-wide, secure database for value added services' numbering ranges. The database is intended as a transparency tool that will enable National Regulatory Authorities (NRAs) and operators to have direct access to information about which numbering ranges can generate higher costs (termination rates) in all Member States. It represents a necessary intermediate step to increase transparency at retail level as it could be used to inform roaming customers about the types of services that may be subject to increased charges when roaming. BEREC should establish the procedures by which the competent authorities are to provide and update the information requested under Article 17.
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↓ 531/2012 recital 92 (adapted)

⇒ new

- (54) The national regulatory authorities which are responsible for carrying out tasks under ~~the 2002 regulatory framework for electronic communications~~ ☒ Directive (EU) 2018/1972 ☒ should have the powers needed to ☒ monitor, ☒ supervise and enforce the obligations under this Regulation within their territory. They should also monitor developments in the pricing of voice, ☒ SMS ☒ and data services for roaming

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<sup>72</sup> Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services (OJ L 151, 7.6.2019, p. 70).

customers within the Union including, where appropriate, the specific costs related to roaming calls made and received in the outermost regions of the Union and the need to ensure that these costs can be adequately recovered on the wholesale market, and that traffic-steering techniques are not used to limit choice to the detriment of customers. They should ensure that up-to-date information on the application of this Regulation is made available to interested parties and publish the results of such monitoring every six months. Information should be provided on corporate, post-paid and pre-paid customers separately.

↓ 531/2012 recital 93 (adapted)

- (55) In-country roaming in the outermost regions of the Union where mobile telephony licences are distinct from those issued in respect of the rest of the national territory could benefit from rate reductions equivalent to those practised on the internal market for roaming services. The implementation of this Regulation should not give rise to less favourable pricing treatment for customers using in-country roaming services as opposed to customers using Union-wide roaming services. To ~~this~~ ☒ that ☒ end, the national authorities may take additional measures consistent with Union law.

↓ 2017/920 recital 20 (adapted)

- (56) While ensuring business confidentiality and in order to monitor and supervise the application of ☒ this ☒ 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. Those authorities should also be allowed to require information on the adoption and application of conditions in wholesale roaming agreements aiming to prevent permanent roaming and any anomalous or abusive use of wholesale roaming access for purposes other than the provision of regulated roaming services to roaming providers' customers travelling within the Union.

↓ 531/2012 recital 81 (adapted)

⇒ new

- (57) Where Union providers of mobile ~~telephony~~ services find the benefits of interoperability and end-to-end connectivity for their customers jeopardised by the termination, or threat of termination, of their roaming arrangements with mobile network operators in other Member States, or are unable to provide their customers with service in another Member State as a result of a lack of agreement with at least one wholesale network provider, national regulatory authorities should make use, where necessary, of the powers under Article ~~615~~ of ~~the Access Directive (EU) 2018/1972~~ to ensure adequate access and interconnection ~~in order to guarantee such end-to-end connectivity and the interoperability of services~~, taking into account the objectives of ☒ set out in ☒ Article ~~38~~ of ~~the Framework~~ ☒ that ☒ Directive, in particular the ~~creation~~ ☒ development ☒ of ~~a fully functioning for electronic communications services~~ ☒ the ☒ internal market ☒ by favouring the provision, availability and interoperability of pan-European services, and end-to-end connectivity ☒.

↓ 2017/920 recital 21 (adapted)

- (58) The specific price regulation applicable to wholesale roaming services entails that an overall Union cap applies to a composite product which may also include other wholesale roaming 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 those inputs are predicted to decrease, in particular because of possible additional measures ~~that may be taken in accordance with Directive 2002/21/EC of the European Parliament and of the Council<sup>73</sup> (Framework Directive) (EU) 2018/1972~~ aiming to ensure 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 BEREC's opinion, where it has been consulted, in accordance with the specific regulatory obligations applicable to roaming as well as with ~~the Framework Directive and with Directives 2002/19/EC<sup>74</sup>, 2002/20/EC<sup>75</sup>, and 2002/22/EC<sup>76</sup> of the European Parliament and of the Council~~ Directive (EU) 2018/1972.

↓ 531/2012 recital 94

~~When laying down the rules on penalties applicable to infringements of this Regulation, Member States should, inter alia, take into account the possibility for roaming providers to compensate customers for any delay or hindrance to the switch to an alternative roaming provider, in accordance with their national law.~~

↓ 2017/920 recital 22 (adapted)

⇒ new

- (59) It is necessary to monitor and to review regularly the functioning of wholesale roaming markets and their interrelationship with the retail roaming markets, 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 any relevant BEREC report.~~ The Commission should subsequently submit **biennial** ⇒ two ⇐ reports to the European Parliament and to the Council. ~~The first such report should be submitted by 15 December 2019.~~ In its biennial reports, the Commission should, in particular, assess whether RLAH has any impact on the evolution of tariff plans available on the

<sup>73</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>74</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>75</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>76</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).~~

retail markets. ~~This~~ ☒ That ☒ should include, on the one hand, an assessment of any emergence of tariff plans that include only 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 addition, the Commission's reports should assess how, at wholesale level, access to the different network technologies and generations is ensured; the level of usage of trading platforms and similar instruments to trade traffic at wholesale level; the evolution of the machine-to-machine roaming; the persisting problems at retail level in relation to value added services and the application of the measures on emergency communications ☒. In order to enable such reporting with a view to assessing how the roaming markets adapt to RLAH rules, sufficient data should be gathered on the functioning of those markets after the implementation of those rules.

↓ 2017/920 recital 23

☒ new

- (60) In order to assess competitive developments in Union-wide roaming markets and to report regularly on changes in actual wholesale roaming charges for unbalanced traffic between providers of roaming services, BEREC should collect data from national regulatory authorities on the actual charges applied for balanced and unbalanced traffic respectively. BEREC should also collect data on cases where parties to a wholesale roaming agreement have opted out from the application of maximum wholesale roaming charges or have implemented measures at wholesale level that aim 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. On the basis of the data collected ☒ with sufficient level of granularity ☒, BEREC should report regularly on the relationship between retail prices, wholesale charges and wholesale costs for roaming services. ☒ BEREC should also collect the necessary data to allow the monitoring of the elements to be assessed under Article 21(1) of this Regulation. ☒

↓ 2017/920 recital 24 (adapted)

- (61) The Commission, BEREC and the national regulatory authorities concerned should fully ensure business confidentiality when sharing information for the purposes of reviewing, monitoring and supervising the application of ☒ this ☒ Regulation ~~(EU) No 531/2012~~. Compliance with business confidentiality requirements should therefore not prevent national regulatory authorities from being able to share in a timely manner confidential information for such purposes.

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↓ new

(62) In order to ensure that the maximum wholesale charges are based on recent and updated data, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to amend the maximum wholesale charges that a visited network operator can levy on the roaming provider for the provision of regulated voice, SMS or data roaming services by means of that visited network. This Regulation should lay down the detailed criteria and parameters on the basis of which the values of those maximum wholesale charges are set. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>77</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

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↓ 531/2012 recital 95 and  
2015/2120 recital 34 (adapted)  
⇒ new

(63) Since the objectives of this Regulation, namely to ~~establish a common approach to ensure that users of public mobile communication networks when travelling within the Union do not pay excessive prices for Union-wide roaming services, thereby achieving a high level of consumer protection by enhancing competition between roaming providers,~~ ⇒ provide for a common approach for ensuring that users of public mobile communications networks, when travelling within the Union, do not pay excessive prices for Union-wide roaming services in comparison with competitive national prices, while increasing transparency and ensuring sustainability of the provision of retail roaming services at domestic prices as well as a genuine RLAH experience in terms of quality of service and access to emergency services while roaming, ⇨ cannot be sufficiently achieved by the Member States ~~in a secure, harmonised and timely manner and~~ ☒ but ☒ can therefore ☒ rather ☒ be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as 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 those objectives.

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↓ 2017/920 recital 27

~~(64)~~ This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.<sup>78</sup>

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<sup>77</sup> OJ L 123, 12.5.2016, p. 1.



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↓ 2015/2120 recital 35 (adapted)

(65) The European Data Protection Supervisor was consulted in accordance with Article 4228(2) of Regulation (EU) 2018/1725<sup>78</sup> ~~=(EC) No 45/2001<sup>79</sup> of the European Parliament and of the Council and delivered an opinion on 24 November 2013,~~

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↓ 531/2012 recital 12

~~The 2002 regulatory framework for electronic communications draws on the principle that ex-ante regulatory obligations should only be imposed where there is not effective competition, providing for a process of periodic market analysis and review of obligations by national regulatory authorities, leading to the imposition of ex-ante obligations on operators designated as having significant market power. The elements constituting this process include the definition of relevant markets in accordance with the Commission's Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex-ante regulation in accordance with Directive 2002/21/EC<sup>80</sup> (hereinafter referred to as 'the Recommendation'), the analysis of the defined markets in accordance with the Commission's guidelines on market analysis and the assessment of significant market power under the Union regulatory framework for electronic communications networks and services<sup>81</sup>, the designation of operators with significant market power and the imposition of ex-ante obligations on operators so designated.~~

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↓ 531/2012 recital 13 (adapted)

~~The Recommendation identified as a relevant market susceptible to ex-ante regulation the wholesale national market for international roaming on public mobile networks. However, the work undertaken by the national regulatory authorities, both individually and within the European Regulators Group (ERG) and its successor the Body of European Regulators for Electronic Communications (BEREC) established by Regulation (EC) No 1211/2009 of the European Parliament and of the Council<sup>82</sup>, in analysing the wholesale national markets for international roaming has demonstrated that it has not yet been possible for a national regulatory authority to address effectively the high level of wholesale Union-wide roaming charges because of the difficulty in identifying undertakings with significant market power in view of the specific circumstances of international roaming, including its cross-border nature.~~

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<sup>78</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

<sup>79</sup> ~~Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).~~

<sup>80</sup> OJ L 114, 8.5.2003, p. 45.

<sup>81</sup> OJ C 165, 11.7.2002, p. 6.

<sup>82</sup> ~~Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office (OJ L 337, 18.12.2009, p. 1).~~

~~Following the entry into force of Regulation (EC) No 717/2007, the roaming market was withdrawn from the revised Recommendation<sup>83</sup>.~~

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↓ 531/2012 recital 15

~~Accordingly, there is pressure for Member States to take measures to address the level of international roaming charges, but the mechanism for *ex ante* regulatory intervention by national regulatory authorities provided by the 2002 regulatory framework for electronic communications has not proved sufficient to enable those authorities to act decisively in the consumers' interest in this specific area.~~

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↓ 531/2012 recital 16 (adapted)

~~Furthermore, the European Parliament resolution on European electronic communications regulation and markets<sup>84</sup> called on the Commission to develop new initiatives to reduce the high costs of cross-border mobile telephone traffic, while the European Council of 23 and 24 March 2006 concluded that focused, effective and integrated information and communication technology (ICT) policies both at Union and national level are essential to achieving the goals of economic growth and productivity and noted in this context the importance for competitiveness of reducing roaming charges.~~

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↓ 531/2012 recital 17

~~The 2002 regulatory framework for electronic communications, on the basis of considerations apparent at that time, was aimed at removing all barriers to trade between Member States in the area that it harmonised, inter alia, measures which affect roaming charges. However, this should not prevent the adaptation of harmonised rules in step with other considerations in order to find the most effective means of enhancing competition in the internal market for roaming services and achieving a high level of consumer protection.~~

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↓ 531/2012 recital 21 (adapted)

~~Regulation (EC) No 717/2007 is to expire on 30 June 2012. Prior to its expiry, the Commission has carried out a review in accordance with Article 11 thereof, where it was required to evaluate whether the objectives of that Regulation had been achieved and to review developments in wholesale and retail charges for the provision to roaming customers of voice, SMS and data communications services. In its report to the European Parliament and the Council of 6 July 2011 on the outcome of the review of the functioning of Regulation (EC) No 717/2007, the Commission concluded that it was appropriate to extend the applicability of Regulation (EC) No 717/2007 beyond 30 June 2012.~~

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<sup>83</sup> ~~Commission Recommendation of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (OJ L 344, 28.12.2007, p. 65).~~

<sup>84</sup> ~~OJ C 285 E, 22.11.2006, p. 143.~~

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↓ 531/2012 recital 22 (adapted)

~~Data on the development of prices for Union-wide voice, SMS and data roaming services since the entry into force of Regulation (EC) No 717/2007, including in particular those collected on a quarterly basis by national regulatory authorities and reported through the medium of the BEREC, do not provide evidence to suggest that competition at the retail or wholesale levels has reasonably developed and is likely to be sustainable from June 2012 onwards in the absence of regulatory measures. Such data indicates that retail and wholesale roaming prices are still much higher than domestic prices and continue to cluster at or close to the limits set by Regulation (EC) No 717/2007, with only limited competition below those limits.~~

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↓ 531/2012 recital 23 (adapted)

~~The expiry on 30 June 2012 of the regulatory safeguards which apply to Union-wide roaming services at wholesale and retail levels by virtue of Regulation (EC) No 717/2007 would therefore give rise to a significant risk that the underlying lack of competitive pressures in the internal market for roaming services and the incentive for roaming providers to maximise their roaming revenues would result in retail and wholesale prices for Union-wide roaming that do not constitute a reasonable reflection of the underlying costs involved in the provision of the service, thereby jeopardising the objectives of that Regulation. Regulatory intervention in the market for mobile roaming services should therefore be extended beyond 30 June 2012 in order to ensure the smooth functioning of the internal market by allowing competition to develop, while at the same time guaranteeing that consumers continue to benefit from the assurance that they will not be charged an excessive price, in comparison with competitive national prices.~~

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↓ 531/2012 recital 30

~~Mobile communications services are sold in bundles including both domestic and roaming services, which limits customer choice for roaming services. Such bundles reduce transparency concerning roaming services, since it is difficult to compare individual items within the bundles. Consequently, competition among operators on the basis of the roaming element in the mobile bundle is not yet apparent. Facilitating the availability of roaming as a stand-alone service would address structural problems by raising consumer awareness of roaming prices, allowing distinct consumer choice concerning roaming services and thus increasing competitive pressure on the demand side. This will therefore contribute to the smooth functioning of the internal market for roaming services.~~

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↓ 531/2012 recital 41

~~Until the structural measures have brought sufficient competition in the internal market for roaming services which would lead to reductions in wholesale costs which in turn would be passed on to consumers, the most effective and proportionate approach to regulating the level of prices for making and receiving intra-Union roaming calls is the setting at Union level of a maximum average per-minute charge at wholesale level and the limiting of charges at retail level through the Eurotariff introduced by Regulation (EC) No 717/2007, which was extended by the euro-SMS tariff provided for in Regulation (EC) No 544/2009 of the European~~

Parliament and of the Council<sup>85</sup> and should be extended by the euro data tariff provided for in this Regulation. The average wholesale charge should apply between any pair of operators within the Union over a specified period.

↓ 531/2012 recital 42

The transitory euro voice, euro SMS and euro data tariffs should be set at a safeguard level which, whilst ensuring that consumer benefits are not only preserved but even increased during a transitional period of implementing the structural measures, guarantees a sufficient margin to roaming providers and encourages competitive roaming offerings at lower rates. During the period concerned, roaming providers should actively bring to the attention of the customers information about the Eurotariffs and offer them to all their roaming customers, free of charge, and in a clear and transparent manner.

↓ 531/2012 recital 43

The transitory euro voice, euro SMS and euro data tariffs to be offered to roaming customers should reflect a reasonable margin over the wholesale cost of providing a roaming service, whilst allowing roaming providers the freedom to compete by differentiating their offerings and adapting their pricing structures to market conditions and consumer preferences. Such safeguard caps should be set at levels which do not distort the competitive benefits of structural measures and could be removed once the structural measures have had an opportunity to deliver concrete gains for customers. This regulatory approach should not apply to the part of the tariff that is charged for the provision of value-added services but only to the tariffs for the connection to such services.

↓ 531/2012 recital 44

This regulatory approach should be simple to implement and monitor in order to minimise the administrative burden both for the operators and roaming providers which are affected by its requirements and for the national regulatory authorities charged with its supervision and enforcement. It should also be transparent and immediately understandable to all mobile customers within the Union. Furthermore it should provide certainty and predictability to operators providing wholesale and retail roaming services. The level in monetary terms of the maximum per-minute charges at wholesale and retail level should therefore be specified in this Regulation.

↓ 531/2012 recital 45

The maximum average per-minute charge at wholesale level so specified should take account of the different elements involved in the making of a Union-wide roaming call, in particular the cost of originating and terminating calls over mobile networks and including overheads, signalling and transit. The most appropriate benchmark for call origination and for call termination is the average mobile termination rate for mobile network operators in the Union, based on information provided by the national regulatory authorities and published by the

<sup>85</sup> Regulation (EC) No 544/2009 of the European Parliament and of the Council of 18 June 2009 amending Regulation (EC) No 717/2007 on roaming on public mobile telephone networks within the Community and Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (OJ L 167, 29.6.2009, p. 12).

~~Commission. The maximum average per minute charge established by this Regulation should therefore be determined taking into account the average mobile termination rate, which offers a benchmark for the costs involved. The maximum average per minute charge at wholesale level should decrease annually to take account of reductions in mobile termination rates imposed by national regulatory authorities from time to time.~~

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↓ 531/2012 recital 46

~~The transitory euro voice tariff applicable at retail level should provide roaming customers with the assurance that they will not be charged an excessive price when making or receiving a regulated roaming call, whilst leaving the roaming provider sufficient margin to differentiate the products they offer to customers.~~

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↓ 531/2012 recital 47

~~During the transitional period of safeguard caps, all consumers should be informed about, and have the option of choosing without additional charges or preconditions, a simple roaming tariff which will not exceed maximum charges. A reasonable margin between wholesale costs and retail prices should ensure that roaming providers cover all their specific roaming costs at retail level including appropriate shares of marketing costs and handset subsidies and are left with an adequate residual to yield a reasonable return. Transitory euro voice, euro SMS and euro data tariffs are an appropriate means to provide both the consumer with protection and the roaming provider with flexibility. In line with the wholesale level, the maximum levels of the euro voice, euro SMS and euro data tariffs should decrease annually.~~

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↓ 531/2012 recital 48

~~During the transitional period of safeguard caps, new roaming customers should be fully informed in a clear and understandable manner of the range of tariffs that exist for roaming within the Union, including the tariffs which are compliant with the transitory euro voice, euro SMS and euro data tariffs. Existing roaming customers should be given the opportunity to choose a new tariff compliant with the transitory euro voice, euro SMS and euro data tariffs or any other roaming tariffs within a certain time frame. For existing roaming customers who have not made their choice within this time frame, it is appropriate to distinguish between those who had already opted for a specific roaming tariff or package before the entry into force of this Regulation and those who had not. The latter should be automatically accorded a tariff that complies with this Regulation. Roaming customers who already benefit from specific roaming tariffs or packages which suit their individual requirements and which they have chosen on that basis should remain on their previously selected tariff or package if, after having been reminded of their current tariff conditions and of the applicable Eurotariffs, they express the choice to their roaming provider to remain on that tariff. Such specific roaming tariffs or packages could include, for example, roaming flat rates, non public tariffs, tariffs with additional fixed roaming charges, tariffs with per minute charges lower than the maximum euro voice, euro SMS and euro data tariffs or tariffs with set-up charges.~~

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↓ 531/2012 recital 49 (adapted)

~~Since this Regulation should constitute a specific measure within the meaning of Article 1(5) of the Framework Directive, and since providers of Union wide roaming services may be~~

~~required by this Regulation to make changes to their retail roaming tariffs in order to comply with the requirements of this Regulation, such changes should not trigger for mobile customers any right under national laws transposing the 2002 regulatory framework for electronic communications to withdraw from their contracts.~~

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↓ 531/2012 recital 50 (adapted)

~~This Regulation should not prejudice innovative offers to consumers which are more advantageous than the transitory euro-voice, euro-SMS and euro-data tariffs as defined in this Regulation, but rather should encourage innovative offers to roaming customers at lower rates in particular in response to the additional competitive pressure created by the structural provisions of this Regulation. This Regulation does not require roaming charges to be reintroduced in cases where they have been abolished altogether, nor does it require existing roaming charges to be increased to the level of the transitory safeguard limits set out in this Regulation.~~

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↓ 531/2012 recital 53 (adapted)

~~The ERG, the predecessor of the BEREC, estimated that the practice of mobile operators of using charging intervals of more than one second when billing for roaming services at retail level has added 24 % to a typical euro-voice tariff bill for calls made and 19 % for calls received. They also stated that these increases represent a form of hidden charge since they are not transparent to most consumers. For this reason, the ERG recommended urgent action to address the different billing practices at retail level applied to the euro-voice tariff.~~

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↓ 531/2012 recital 54

~~While Regulation (EC) No 717/2007, by introducing a Eurotariff in the Union, established a common approach to ensuring that roaming customers are not charged excessive prices for regulated roaming calls, the different billing unitisation practices employed by mobile operators seriously undermines its consistent application. This also means that, despite the cross-border nature of Union-wide roaming services, there are divergent approaches in relation to the billing of regulated roaming calls which distort competitive conditions in the internal market.~~

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↓ 531/2012 recital 55

~~A common set of rules regarding unitisation of euro-voice tariff bills at retail level should therefore be introduced in order to further strengthen the internal market and provide throughout the Union the same high level of protection to consumers of Union-wide roaming services.~~

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↓ 531/2012 recital 56

~~Providers of regulated roaming calls at the retail level should therefore be required to bill their customers on a per-second basis for all calls subject to a euro-voice tariff subject only to the possibility to apply a minimum initial charging period of no more than 30 seconds for calls made. This will enable roaming providers to cover any reasonable set-up costs and to provide flexibility to compete by offering shorter minimum charging periods. No minimum initial charging period is justified in the case of euro-voice tariff calls received, as the underlying~~



~~wholesale cost is charged on a per-second basis and any specific set-up costs are already covered by mobile termination rates.~~

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↓ 531/2012 recital 57

~~Customers should not have to pay for receiving voice mail messages in a visited network, as they cannot control the duration of such messages. This should be without prejudice to other applicable voice mail charges, for example charges for listening to such messages.~~

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↓ 531/2012 recital 59

~~With regard to SMS roaming services, as is the case for voice roaming calls, there is a significant risk that imposing wholesale pricing obligations alone would not result automatically in lower rates for retail customers. On the other hand, action to reduce the level of retail prices without addressing the level of the wholesale costs associated with the provision of these services could prejudice the position of some roaming providers, in particular smaller roaming providers, by increasing the risk of price squeeze.~~

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↓ 531/2012 recital 60

~~Furthermore, because of the particular structure of the market for roaming services and its cross-border nature, the 2002 regulatory framework for electronic communications has not provided national regulatory authorities with suitable tools to address effectively the competitive problems underlying the high level of wholesale and retail prices for regulated roaming SMS services. This fails to ensure the smooth functioning of the internal market and should be corrected.~~

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↓ 531/2012 recital 61

~~Regulatory obligations should therefore be imposed with regard to regulated roaming SMS services at wholesale level, in order to establish a more reasonable relationship between wholesale charges and the underlying costs of provision, and at retail level for a transitional period to protect the interests of roaming customers until the structural measures become effective.~~

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↓ 531/2012 recital 62

~~Until the structural measures have brought sufficient competition in the market for roaming services, the most effective and proportionate approach to regulating the level of prices for regulated roaming SMS messages at wholesale level is the setting at Union level of a maximum average charge per SMS sent from a visited network. The average wholesale charge should apply between any pair of operators within the Union over a specified period.~~

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↓ 531/2012 recital 63

~~The maximum wholesale charge for regulated roaming SMS services should include all costs incurred by the provider of the wholesale service, including, inter alia, origination, transit and the unrecovered cost of termination of roaming SMS messages on the visited network. Wholesale providers of regulated roaming SMS services should therefore be prohibited from~~

~~introducing a separate charge for the termination of roaming SMS messages on their network, in order to ensure the consistent application of the rules established by this Regulation.~~

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↓ 531/2012 recital 65 (adapted)

~~Regulation (EC) No 544/2009 considered that, in the absence of structural elements introducing competition in the market for roaming services, the most effective and proportionate approach to regulating the level of prices for Union-wide roaming SMS messages at the retail level was the introduction of a requirement for mobile operators to offer their roaming customers a euro SMS tariff which does not exceed a specified maximum charge.~~

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↓ 531/2012 recital 66 (adapted)

~~Until the structural measures become effective, the transitory euro SMS tariff should be retained at a safeguard level which, whilst ensuring that the existing consumer benefits are preserved, guarantees a sufficient margin to roaming providers while also more reasonably reflecting the underlying costs of provision.~~

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↓ 531/2012 recital 67 (adapted)

~~The transitory euro SMS tariff that may be offered to roaming customers should therefore reflect a reasonable margin over the costs of providing a regulated roaming SMS service, whilst allowing roaming providers the freedom to compete by differentiating their offerings and adapting their pricing structures to market conditions and consumer preferences. Such a safeguard cap should be set at a level which does not distort the competitive benefits of structural measures and could be removed once the structural measures become effective. This regulatory approach should not apply to value-added SMS services.~~

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↓ 531/2012 recital 68

~~Roaming customers should not be required to pay any additional charge for receiving a regulated roaming SMS or voicemail message while roaming on a visited network, since such termination costs are already compensated by the retail charge levied for the sending of a roaming SMS or voicemail message.~~

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↓ 531/2012 recital 69 (adapted)

~~A euro SMS tariff should automatically apply to any new or existing roaming customer who has not deliberately chosen or does not deliberately choose a special SMS roaming tariff or a package for roaming services including regulated roaming SMS services.~~

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↓ 531/2012 recital 70

~~An SMS message is a Short Message Service text message and is clearly distinct from other messages such as MMS messages or e-mails. In order to ensure that this Regulation is not deprived of its effectiveness and that its objectives are fully met, any changes to the technical parameters of a roaming SMS message which would differentiate it from a domestic SMS message should be prohibited.~~

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↓ 531/2012 recital 71 (adapted)

~~Data collected by national regulatory authorities indicate that high prices for average wholesale charges for data roaming services levied by visited network operators on roaming customers' roaming providers persist. Even if these wholesale charges appear to be on a downward trend, they are still very high in relation to underlying cost.~~

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↓ 531/2012 recital 72 (adapted)

~~The persistence of high wholesale charges for data roaming services is primarily attributable to high wholesale prices charged by operators of non-preferred networks. Such charges are caused by traffic-steering limitations which leave operators with no incentive to reduce their standard wholesale prices unilaterally since the traffic will be received irrespective of the price charged. This results in an extreme variation in wholesale costs. In some cases the wholesale data roaming charges applicable to non-preferred networks are six times higher than those applied to the preferred network. These excessively high wholesale charges for data roaming services lead to appreciable distortions of competitive conditions between mobile operators within the Union which undermine the smooth functioning of the internal market. They also constrain the ability of roaming providers to predict their wholesale costs and therefore to provide their customers with transparent and competitive retail pricing packages. In view of the limitations on the ability of national regulatory authorities to deal with these problems effectively at national level, a maximum wholesale charge on data roaming services should apply. Regulatory obligations should therefore be imposed with regard to regulated data roaming services at wholesale level, in order to establish a more reasonable relationship between wholesale charges and the underlying costs of provision, and at retail level to protect the interests of roaming customers.~~

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↓ 531/2012 recital 73

~~Roaming providers should not charge the roaming customer for any regulated data roaming service, unless and until the roaming customer accepts the provision of the service.~~

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↓ 531/2012 recital 74 (adapted)

~~The scope of this Regulation should cover the provision of Union-wide retail data roaming services. The special characteristics exhibited by the markets for roaming services, which justified the adoption of Regulation (EC) No 717/2007 and the imposition of obligations on mobile operators with regard to the provision of Union-wide voice roaming calls and SMS messages, apply equally to the provision of Union-wide retail data roaming services. Like voice and SMS roaming services, data roaming services are not purchased independently at national level but constitute only part of a broader retail package purchased by customers from their roaming provider, thereby limiting the competitive forces at play. Likewise, because of the cross-border nature of the services concerned, national regulatory authorities which are responsible for safeguarding and promoting the interests of mobile customers resident within their territory are not able to control the behaviour of the operators of the visited network, situated in other Member States.~~

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↓ 531/2012 recital 75 (adapted)

~~As with the regulatory measures already in place for voice and SMS services, until the structural measures bring sufficient competition, the most effective and proportionate approach to regulating the level of prices for Union-wide retail data roaming services for a transitional period is the introduction of a requirement for roaming providers to offer their roaming customers a transitory euro data tariff which does not exceed a specified maximum charge. The euro data tariff should be set at a safeguard level which, whilst ensuring consumer protection until the structural measures become effective, guarantees a sufficient margin to roaming providers while also more reasonably reflecting the underlying costs of provision.~~

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↓ 531/2012 recital 76 (adapted)

~~The transitory euro data tariff that may be offered to roaming customers should therefore reflect a reasonable margin over the costs of providing a regulated data roaming service, whilst allowing roaming providers the freedom to compete by differentiating their offerings and adapting their pricing structures to market conditions and consumer preferences. Such a safeguard cap should be set at a level which does not distort the competitive benefits of structural measures and could be removed once the structural measures have had an opportunity to deliver concrete and lasting gains for customers. Similar to the approach followed for voice and SMS roaming services, given the reductions foreseen in the underlying costs for the provision of retail data roaming services, the maximum regulated charges for the transitory euro data tariff should follow a declining glide path.~~

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↓ 531/2012 recital 77 (adapted)

~~A transitory euro data tariff should automatically apply to any new or existing roaming customer who has not deliberately chosen or does not deliberately choose a special data roaming tariff or a package for roaming services including regulated data roaming services.~~

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↓ 531/2012 recital 78 (adapted)

~~In order to ensure that consumers pay for the data services they actually consume and to avoid the problems observed with voice services after the introduction of Regulation (EC) No 717/2007 of the hidden charges for the consumer due to the charging mechanisms applied by operators, the transitory euro data tariff should be billed on a per kilobyte basis. Such charging is consistent with the charging mechanism already applicable at the wholesale level.~~

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↓ 531/2012 recital 79

~~Roaming providers may offer a fair-use, all-inclusive, monthly flat-rate to which no maximum charges apply and which could cover all Union-wide roaming services.~~

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↓ 531/2012 recital 80 (adapted)

~~To ensure that all users of mobile voice telephony may benefit from the provisions of this Regulation, the transitory retail pricing requirements should apply regardless of whether roaming customers have a pre-paid or a post-paid contract with their roaming provider, and~~

~~regardless of whether the roaming provider has its own network, is a mobile virtual network operator or is a reseller of mobile voice telephony services.~~

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↓ 531/2012 recital 83 (adapted)

~~Transparency also requires that providers furnish information on roaming charges, in particular on the euro voice, euro SMS and euro data tariffs and the all-inclusive flat rate should they offer one, when subscriptions are taken out and each time there is a change in roaming charges. Roaming providers should provide information on roaming charges by appropriate means such as invoices, the internet, TV advertisements or direct mail. All information and offers should be clear, understandable, permit comparison and be transparent with regard to prices and service characteristics. Advertising of roaming offers and marketing to consumers should fully comply with consumer protection legislation, in particular with Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (Unfair Commercial Practices Directive)<sup>86</sup>. Roaming providers should ensure that all their roaming customers are aware of the availability of regulated tariffs for the period concerned and should send a clear and unbiased communication to these customers in writing describing the conditions of the euro voice, euro SMS and euro data tariffs and the right to switch to and from them.~~

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↓ 531/2012 recital 85

~~In particular, roaming providers should provide their roaming customers, free of charge, with personalised tariff information on the charges applicable to those customers for data roaming services every time they initiate a data roaming service on entering another country. This information should be delivered to their mobile device in the manner best suited to its easy receipt and comprehension, and in such a manner as to enable easy access to it at a later date.~~

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↓ 531/2012 recital 86

~~In order to facilitate customers' understanding of the financial consequences of the use of data roaming services and to permit them to monitor and control their expenditure, roaming providers should, both before and after the conclusion of a contract, keep their customers adequately informed of charges for regulated data roaming services. Such information could include examples of the approximate amount of data used by, for example, sending an e-mail, sending a picture, web-browsing and using mobile applications.~~

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↓ 531/2012 recital 96 (adapted)

~~Regulatory obligations on wholesale charges for voice, SMS and data roaming services should be maintained until the structural measures have become effective and competition in the wholesale markets has developed sufficiently. In addition, market trends currently show that data services will progressively become the most relevant segment of mobile services, and wholesale data roaming services currently exhibit the highest level of dynamism, with prices reasonably below the current regulated rates.~~

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<sup>86</sup> OJ L 149, 11.6.2005, p. 22.

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↓ 531/2012 recital 97 (adapted)

~~Retail safeguard caps should be set at sufficiently high levels which do not distort the potential competitive benefits of structural measures and could be removed completely once those measures become effective and have enabled the development of a genuine internal market. Therefore, retail safeguard caps should follow a downward trend and subsequently expire.~~

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↓ 531/2012 recital 98 (adapted)

~~The Commission should review the effectiveness of this Regulation in light of its objectives and the contribution to the implementation of the 2002 regulatory framework for electronic communications and the smooth functioning of the internal market. In this context, the Commission should consider the impact on the competitive position of mobile communications providers of different sizes and from different parts of the Union, the developments, trends and transparency in retail and wholesale charges, their relation to actual costs, the extent to which the assumptions made in the impact assessment that accompanied this Regulation have been confirmed, the costs of compliance and the impact on the investments. The Commission should also, in the light of technological developments, consider the availability and quality of services which are an alternative to roaming (such as access through Wi-Fi).~~

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↓ 531/2012 recital 99 (adapted)

~~Regulatory obligations on wholesale and retail charges for voice, SMS and data roaming services should be maintained to safeguard consumers as long as competition at the retail or wholesale level is not fully developed. To this end, the Commission should, by 30 June 2016, assess whether the objectives of this Regulation have been achieved, including whether the structural measures have been fully implemented and competition is sufficiently developed in the internal market for roaming services. If the Commission concludes that competition has not developed sufficiently, the Commission should make appropriate proposals to the European Parliament and the Council to ensure that consumers are adequately safeguarded as from 2017.~~

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↓ 531/2012 recital 100 (adapted)

~~After the abovementioned review, and in order to ensure the continuous monitoring of roaming services in the Union, the Commission should prepare a report to the European Parliament and the Council every two years which includes a general summary of the latest trends in roaming services and an intermediary assessment of the progress towards achieving the objectives of this Regulation and of the possible alternative options for achieving these objectives.~~



HAVE ADOPTED THIS REGULATION:

*Article 1*

**Subject matter and scope**

1. This Regulation ~~introduces~~ ☒ provides for ☒ a common approach ☒ for ☒ ~~to~~ ensuring that users of public mobile communications networks, when travelling within the Union, do not pay excessive prices for Union-wide roaming services in comparison with competitive national prices, when making calls and receiving calls, when sending and receiving SMS messages and when using packet switched data communication services, thereby contributing to the smooth functioning of the internal market while achieving a high level of consumer protection, fostering competition and transparency in the market and offering both incentives for innovation and consumer choice.

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~~It lays down rules to enable the separate sale of regulated roaming services from domestic mobile communications services and sets out the conditions for wholesale access to public mobile communications networks for the purpose of providing regulated roaming services. It also lays down transitory rules on the charges that may be levied by roaming providers for the provision of regulated roaming services for voice calls and SMS messages originating and terminating within the Union and for packet switched data communication services used by roaming customers while roaming on a mobile communications network within the Union. It applies both to charges levied by network operators at wholesale level and to charges levied by roaming providers at retail level.~~

~~2. The separate sale of regulated roaming services from domestic mobile communications services is a necessary intermediate step to increase competition so as to lower roaming tariffs for customers in order to achieve an internal market for mobile communication services and ultimately for there to be no differentiation between national and roaming tariffs.~~

~~23.~~ This Regulation also lays down rules aimed at increasing **price** transparency and improving the provision of information on charges to users of roaming services.

~~4. This Regulation constitutes a specific measure within the meaning of Article 1(5) of the Framework Directive~~

~~35.~~ The maximum charges set out in this Regulation are expressed in euro.

~~46.~~ Where maximum charges under Articles ~~⇒ 9 ⇐ 7, 9 and 12~~ are denominated in currencies other than the euro, ~~the initial limits pursuant to those Articles shall be determined in those currencies by applying the reference exchange rates published on 1 May 2012 by the European Central Bank in the Official Journal of the European Union.~~

~~For the purposes of the subsequent limits provided for in Article 7(2), Article 9(1), and Article 12(1), the revised values shall be determined  $\boxtimes$  in those currencies  $\ltimes$  by applying the  $\Rightarrow$  average of the  $\Leftarrow$  reference exchange rates so published on ~~1 May~~  $\Rightarrow$  15 January, 15 February and 15 March  $\Leftarrow$  of the relevant calendar year  $\boxtimes$  by the European Central Bank in the *Official Journal of the European Union*  $\ltimes$ . For the maximum charges ~~under Article 7(2), Article 9(1) and Article 12(1)~~, the limits in currencies other than the euro shall be revised annually as from  $\Rightarrow$  2023  $\Leftarrow$  ~~2015~~. The annually revised limits in those currencies shall apply from ~~1 July~~  $\Rightarrow$  15 May  $\Leftarrow$  ~~using the reference exchange rates published on 1 May of the same year.~~~~

~~7. Where maximum charges under Articles 8, 10 and 13 are denominated in currencies other than the euro, the initial limits pursuant to those Articles shall be determined in those currencies by applying the average of the reference exchange rates published on 1 March, 1 April and 1 May 2012 by the European Central Bank in the *Official Journal of the European Union*.~~

~~For the purposes of the subsequent limits provided for in Article 8(2), Article 10(2) and Article 13(2), the revised values shall be determined by applying the average of the reference exchange rates so published on 1 March, 1 April and 1 May of the relevant calendar year. For the maximum charges under Article 8(2), Article 10(2) and Article 13(2), the limits in currencies other than euro shall be revised annually as from 2015. The annually revised limits in those currencies shall apply from 1 July using the average of the reference exchange rates published on 1 March, 1 April and 1 May of the same year.~~

## Article 2

### Definitions

1. For the purposes of this Regulation, the definitions set out in Article 2 of ~~the Access Directive, Article 2 of the Framework Directive, and Article 2 of the Universal Service Directive~~ Directive (EU) 2018/1972 shall apply.

2. In addition to the definitions referred to in paragraph 1, the following definitions shall apply:

(a) ‘roaming provider’ means an undertaking that provides a roaming customer with regulated retail roaming services;

(b) ‘domestic provider’ means an undertaking that provides a roaming customer with domestic mobile communications services;

~~(c) ‘alternative roaming provider’ means a roaming provider different from the domestic provider;~~

↓ 531/2012 (adapted)

~~(c)~~ (cd) ‘home network’ means a public communications network located within a Member State and used by the roaming provider for the provision of regulated retail roaming services to a roaming customer;

(~~de~~) 'visited network' means a terrestrial public mobile communications network situated in a Member State other than that of the roaming customer's domestic provider that permits a roaming customer to make or receive calls, to send or receive SMS messages or to use packet switched data communications, by means of arrangements with the home network operator;

(~~ef~~) 'Union-wide roaming' means the use of a mobile device by a roaming customer to make or receive intra-Union calls, to send or receive intra-Union SMS messages, or to use packet switched data communications, while in a Member State other than that in which the network of the domestic provider is located, by means of arrangements between the home network operator and the visited network operator;

(~~fe~~) 'roaming customer' means a customer of a roaming provider of regulated roaming services, by means of a terrestrial public mobile communications network situated in the Union, whose contract or arrangement with that roaming provider permits Union-wide roaming;

(~~gh~~) 'regulated roaming call' means a mobile voice telephony call made by a roaming customer, originating on a visited network and terminating on a public communications network within the Union or received by a roaming customer, originating on a public communications network within the Union and terminating on a visited network;

(~~hi~~) 'SMS message' means a Short Message Service text message, composed principally of alphabetical ~~and/or~~ numerical characters, ☒ or both, ☒ capable of being sent between mobile and/or fixed numbers assigned in accordance with national numbering plans;

(~~ik~~) 'regulated roaming SMS message' means an SMS message sent by a roaming customer, originating on a visited network and terminating on a public communications network within the Union or received by a roaming customer, originating on a public communications network within the Union and terminating on a visited network;

(~~jm~~) 'regulated data roaming service' means a roaming service enabling the use of packet switched data communications by a roaming customer by means of his mobile device while it is connected to a visited network. ~~A regulated data roaming service does not include~~ ☒ excluding ☒ the transmission or receipt of regulated roaming calls or SMS messages, but ~~does include~~ ☒ including ☒ the transmission and receipt of MMS messages;

(~~ke~~) 'wholesale roaming access' means direct wholesale roaming access or wholesale roaming resale access;

(~~lp~~) 'direct wholesale roaming access' means the making available of facilities ~~and/or~~ services ☒, or both, ☒ by a mobile network operator to another undertaking, under defined conditions, for the purpose of that other undertaking providing regulated roaming services to roaming customers;

(~~me~~) 'wholesale roaming resale access' means the provision of roaming services on a wholesale basis by a mobile network operator different from the visited network

operator to another undertaking for the purpose of that other undertaking providing regulated roaming services to roaming customers;

↓ 2015/2120 Art. 7.1(b)

(n~~€~~) ‘domestic retail price’ means a roaming provider’s domestic retail per-unit charge applicable to calls made and SMS messages sent (both originating and terminating on different public communications networks within the same Member State), and to data consumed by a customer; in the event that there is no specific domestic retail per-unit charge, the domestic retail price shall be deemed to be the same charging mechanism as that applied to the customer for calls made and SMS messages sent (both originating and terminating on different public communications networks within the same Member State), and data consumed in that customer’s Member State.<sup>5</sup>

~~(s) ‘separate sale of regulated retail data roaming services’ means the provision of regulated data roaming services provided to roaming customers directly on a visited network by an alternative roaming provider.~~

↓ 531/2012  
⇒ new

### Article 3

#### Wholesale roaming access

1. Mobile network operators shall meet all reasonable requests for wholesale roaming access ⇒ , in particular allowing the roaming provider to replicate the retail mobile services offered domestically, when technically feasible ⇐ .
2. Mobile network operators may refuse requests for wholesale roaming access only on the basis of objective criteria.
3. Wholesale roaming access shall cover access to all network elements and associated facilities, relevant services, software and information systems, necessary for the provision of regulated roaming services to customers ⇒ , on any network technology and generation available ⇐ .

↓ 2017/920 Art. 1.1(a)

4. Rules on regulated wholesale roaming charges laid down in Articles 107, 119 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 is not subject to the maximum regulated wholesale roaming charge for the period of validity of the agreement.

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.

5. Mobile network operators shall publish a reference offer, taking into account the BEREC guidelines referred to in paragraph 8, and make it available to an undertaking requesting wholesale roaming access. Mobile network operators shall provide the undertaking requesting access with a draft contract, complying with this Article, for such access at the latest one month after the initial receipt of the request by the mobile network operator. The wholesale roaming access shall be granted within a reasonable period of time not exceeding three months from the conclusion of the contract. Mobile network operators receiving a wholesale roaming access request and undertakings requesting access shall negotiate in good faith.

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. ⇒ The reference offer shall contain all information necessary to enable the roaming provider to ensure its customers have access, free of charge, to emergency services through emergency communications to the most appropriate PSAP and the transmission, free of charge, of caller location information to the most appropriate PSAP while using roaming services. ⇐

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 as well as the objective criteria on the basis of which such measures may be taken. Such criteria may refer to aggregate roaming traffic information. They shall not refer to specific information relating to individual traffic of the roaming provider's customers.

The reference offer may, inter alia, provide that where the visited network operator has reasonable grounds for considering 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 Union and national data protection requirements, information allowing the determination of whether a significant share of the roaming provider's customers is in a situation of permanent roaming or whether there is anomalous or abusive use of wholesale roaming access on the network of the visited operator, such as information on the share of customers for which a risk of anomalous or abusive use of regulated retail roaming services provided at the applicable domestic retail price has been established on the basis of objective indicators in accordance with the detailed rules on the application of the fair use policy adopted pursuant to Article ~~86d~~.

The reference offer may, as a last resort, where less stringent measures have failed to address the situation, provide for the possibility to terminate a wholesale roaming agreement where the visited network operator has established 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, and has informed the home network operator accordingly.

The visited network operator may terminate the wholesale roaming agreement unilaterally on grounds of permanent roaming or anomalous or abusive use of wholesale roaming access only upon prior authorisation of the visited network operator's national regulatory authority.

Within three months of receipt of a request by the visited network operator for authorisation to terminate a wholesale roaming agreement, the national regulatory authority of the visited network operator shall, after consulting the national regulatory authority of the home network operator, decide whether to grant or refuse such authorisation and shall inform the Commission accordingly.

The national regulatory authorities of the visited network operator and of the home network operator may each request BEREC to adopt an opinion with regard to the action to be taken in accordance with this Regulation. BEREC shall adopt its opinion within one month of receipt of such a request.

Where BEREC has been consulted, the national regulatory authority of the visited network operator shall await and take the utmost account of BEREC's opinion before deciding, subject to the three-month deadline referred to in the sixth subparagraph, whether to grant or refuse authorisation for the termination of the wholesale roaming agreement.

The national regulatory authority of the visited network operator shall make information concerning authorisations to terminate wholesale roaming agreements available to the public, subject to business confidentiality.

The fifth to ninth subparagraphs of this paragraph shall be without prejudice to the power of a national regulatory authority to require the immediate cessation of a breach of the obligations set out in this Regulation, pursuant to Article ~~181c(7c)~~ 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 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, to give effect to obligations laid down in this Article.

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↓ 531/2012 (adapted)
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7. Where the undertaking requesting the access desires to enter into commercial negotiations to also include components not covered by the reference offer, the mobile network operators shall respond to such a request within a reasonable period of time not exceeding two months from its initial receipt. For the purposes of this paragraph, paragraphs 2 and 5 shall not apply.



8. ~~By 30 September 2012, ☒~~ Within 6 months after the adoption of this Regulation, ☒ and in order to contribute to the consistent application of this Article, BEREC shall, after consulting stakeholders and in close cooperation with the Commission, ~~lay down~~ ☒ update the ☒ guidelines for wholesale roaming access ☒ laid down in accordance with Article 3(8) of Regulation (EU) No 531/2012 ☒.

~~9. Paragraphs 5 to 7 shall apply from 1 January 2013.~~

#### ~~Article 4~~

↓ 2015/2120 Art. 7.3(a)

#### ~~Separate sale of regulated retail data roaming services~~

↓ 531/2012

~~1. Neither domestic nor roaming providers shall prevent customers from accessing regulated data roaming services provided directly on a visited network by an alternative roaming provider.~~

~~2. Roaming customers shall have the right to switch roaming provider at any time. Where a roaming customer chooses to switch roaming provider, the switch shall be carried out without undue delay, and in any case within the shortest possible period of time depending on the technical solution chosen for the implementation of the separate sale of regulated retail roaming services, but under no circumstances exceeding three working days from the conclusion of the agreement with the new roaming provider.~~

~~3. The switch to an alternative roaming provider or between roaming providers shall be free of charge for customers and shall be possible under any tariff plan. It shall not entail any associated subscription or additional fixed or recurring charges, pertaining to elements of the subscription other than roaming, as compared to the conditions prevailing before the switch.~~

~~6. This Article shall apply from 1 July 2014.~~

#### ~~Article 5~~

↓ 2015/2120 Art. 7.4(a)

#### ~~Implementation of separate sale of regulated retail data roaming services~~

↓ 2015/2120 Art. 7.4(b)

~~1. Domestic providers shall implement the obligation related to the separate sale of regulated retail data roaming services provided for in Article 4 so that roaming customers can use separate regulated data 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 retail data roaming services, including user~~

~~authentication services, shall be free of charge and shall not entail any direct charges to roaming customers.~~

↓ 2015/2120 Art. 7.4(c)

~~2. 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).~~

↓ 2015/2120 Art. 7.4(d)

~~3. The technical solution to implement the separate sale of regulated retail data roaming services shall meet the following criteria:~~

↓ 531/2012

~~(a) consumer friendliness, in particular allowing consumers to easily and quickly switch to an alternative roaming provider while keeping their existing mobile phone number and while using the same mobile device;~~

~~(b) ability to serve all categories of consumer demand on competitive terms, including intensive usage of data services;~~

~~(c) ability to effectively foster competition, taking also into account the scope for operators to exploit their infrastructure assets or commercial arrangements;~~

~~(d) cost-effectiveness, taking into account the division of costs between domestic providers and alternative roaming providers;~~

~~(e) ability to give effect to the obligations referred to in Article 4(1) in an efficient manner;~~

~~(f) allowing a maximum degree of interoperability;~~

~~(g) user friendliness, in particular in respect of the customers' technical handling of the mobile device when changing networks;~~

~~(h) ensuring that roaming by Union customers in third countries or by third country customers in the Union is not impeded;~~

~~(i) ensuring that the rules on protection of privacy, personal data, security and integrity of networks and transparency required by the Framework Directive and the Specific Directives are respected;~~

~~(j) taking into account the promotion by national regulatory authorities of the ability of end users to access and distribute information or run applications and services of their choice, in accordance with point (g) of Article 8(4) of the Framework Directive;~~

~~(k) ensuring that providers apply equivalent conditions in equivalent circumstances.~~

~~4. The technical solution may combine one or several technical modalities for the purposes of meeting the criteria set out in paragraph 3.~~

~~5. If necessary, the Commission shall give a mandate to a European standardisation body for the adaptation of the relevant standards that are necessary for the harmonised implementation of the separate sale of regulated retail roaming services.~~

~~6. Paragraphs 1, 3, 4 and 5 of this Article shall apply from 1 July 2014.~~

↓ 531/2012

#### *Article ~~6~~ 4*

### **Committee procedure**

1. The Commission shall be assisted by the Communications Committee established by Article ~~118(1)22~~ of ~~the Framework~~ Directive (EU) 2018/1972. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

↓ 2015/2120 Art. 7.5 (adapted)

#### *Article ~~5~~ ~~6a~~*

### **⊗ Provision of regulated retail roaming services ⊗**

#### **~~Abolition of retail roaming surcharges~~**

~~With effect from 15 June 2017, provided that the legislative act to be adopted following the proposal referred to in Article 19(2) is applicable on that date,~~

~~1. ~~Roaming~~ providers shall not levy any surcharge in addition to the domestic retail price on roaming customers in any Member State for any regulated roaming calls made or received, for any regulated roaming SMS messages sent and for any regulated data roaming services used, including MMS messages, nor any general charge to enable the terminal equipment or service to be used abroad, subject to Articles ~~66b~~ and ~~76e~~.~~

↓ new

2. Roaming providers shall ensure, when technically feasible, that regulated retail roaming services are provided under the same conditions as if such services were consumed domestically, in particular in terms of quality of service.

*Article ~~6~~ ~~6b~~*

**Fair use**

1. Roaming providers may apply in accordance with this Article and the implementing acts referred to in Article ~~86d~~ a ‘fair use policy’ to the consumption of regulated retail roaming services provided at the applicable domestic retail price level, in order to prevent abusive or anomalous usage of regulated retail roaming services by roaming customers, such as the use of such services by roaming customers in a Member State other than that of their domestic provider for purposes other than periodic travel.

Any fair use policy shall enable the roaming provider’s customers to consume volumes of regulated retail roaming services at the applicable domestic retail price that are consistent with their respective tariff plans.

2. Article ~~96e~~ shall apply to regulated retail roaming services exceeding any limits under any fair use policy.

*Article ~~7~~ ~~6e~~*

**Sustainability ~~⊗~~ mechanism ~~⊗~~ of the abolition of retail roaming surcharges**

1. In specific and exceptional circumstances, with a view to ensuring the sustainability of its domestic charging model, where a roaming provider is not able to recover its overall actual and projected costs of providing regulated roaming services in accordance with Articles ~~56a~~ and ~~66b~~, from its overall actual and projected revenues from the provision of such services, that roaming provider may apply for authorisation to apply a surcharge. That surcharge shall be applied only to the extent necessary to recover the costs of providing regulated retail roaming services having regard to the applicable maximum wholesale charges.

2. Where a roaming provider 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 in accordance with the implementing acts referred to in Article ~~86d~~. Every 12 months thereafter, the roaming provider shall update that information and submit it to the national regulatory authority.

3. Upon receipt of an application pursuant to paragraph 2, the national regulatory authority shall assess whether the roaming provider has established that it is unable to recover its costs in accordance with paragraph 1, with the effect that the sustainability of its domestic charging model would be undermined. The assessment of the sustainability of the domestic charging model shall be based on relevant objective factors specific to the roaming provider, including objective variations between roaming providers in the Member State concerned and the level of domestic prices and revenues. The national regulatory authority shall authorise the surcharge where the conditions laid down in paragraph 1 and this paragraph are met.

4. Within one month of receipt of an application pursuant to paragraph 2, the national regulatory authority shall authorise the surcharge unless the application is manifestly

unfounded or provides insufficient information. Where the national regulatory authority considers that the application is manifestly unfounded, or considers that insufficient information has been provided, it shall take a final decision within a further period of two months, after having given the roaming provider the opportunity to be heard, authorising, amending or refusing the surcharge.

*Article ~~8~~ 6d*

**Implementation of fair use policy and of sustainability ~~of~~ mechanism ~~of the~~  
~~abolition of retail roaming surcharges~~**

↓ 2015/2120 Art. 7.5 (adapted)  
⇒ new

1. ~~By 15 December 2016,~~ In order to ensure consistent application of Articles ~~66b~~ and ~~76e~~, the Commission shall, after having consulted BEREC, adopt ~~and~~ and periodically review in the light of market developments ~~implementing~~ acts laying down detailed rules on the application of fair use policy and on the methodology for assessing the sustainability of the ~~provision of~~ ~~abolition of~~ retail roaming ~~services at domestic prices~~ ~~surcharges~~ and on the application to be submitted by a roaming provider for the purposes of that assessment. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article ~~64~~(2).
2. ~~As regards Article 6b,~~ When adopting implementing acts laying down detailed rules on the application of fair use policy, the Commission shall take into account the following:
  - (a) the evolution of pricing and consumption patterns in the Member States;
  - (b) the degree of convergence of domestic price levels across the Union;
  - (c) the travelling patterns in the Union;
  - (d) any observable risks of distortion of competition and investment incentives in domestic and visited markets.
3. ~~As regards Article 6c,~~ When adopting implementing acts laying down detailed rules on the methodology for assessing the sustainability ~~of the provision of retail roaming services at domestic prices~~ ~~of the abolition of retail roaming surcharges~~ for a roaming provider, the Commission shall base them on the following:
  - (a) the determination of the overall actual and projected costs of providing regulated retail roaming services by reference to the effective wholesale roaming charges for unbalanced traffic and a reasonable share of the joint and common costs necessary to provide regulated retail roaming services;
  - (b) the determination of overall actual and projected revenues from the provision of regulated retail roaming services;

(c) the consumption of regulated retail roaming services and the domestic consumption by the roaming provider's customers;

(d) the level of competition, prices and revenues in the domestic market, and any observable risk that roaming at domestic retail prices would appreciably affect the evolution of such prices.

~~4. The Commission shall periodically review the implementing acts adopted pursuant to paragraph 1 in the light of market developments.~~

~~45.~~ The national regulatory authority shall strictly monitor and supervise the application of the fair use policy and the measures on the sustainability ~~⇒ of the provision of retail roaming services at domestic prices ⇐ of the abolition of retail roaming surcharges~~, taking utmost account of relevant objective factors specific to the Member State concerned and of relevant objective variations between roaming providers. Without prejudice to the procedure set out in Article ~~76e~~(3), the national regulatory authority shall in a timely manner enforce the requirements of Articles ~~66b~~ and ~~76e~~ and the implementing acts ~~adopted pursuant to~~ ~~⊗~~ provided for in ~~⊗~~ paragraph ~~1~~ 2 of this Article. The national regulatory authority may at any time require the roaming provider to amend or discontinue the surcharge if it does not comply with Article ~~66b~~ or ~~76e~~. The national regulatory authority shall inform the Commission annually concerning the application of Articles ~~66b~~ and ~~76e~~, and of this Article.

↓ new

5. Implementing Regulation (EU) 2016/2286 shall continue to apply until the entry into force of a new implementing act adopted pursuant to paragraph 1.

↓ 2015/2120 Art. 7.5 (adapted)  
⇒ new

#### Article ~~9 6e~~

#### ~~Provision of regulated retail roaming services~~ ~~⊗~~ **Exceptional application of retail surcharges for the consumption of regulated retail roaming services and provision of alternative tariffs** ~~⊗~~

1. Without prejudice to the second subparagraph, where a roaming provider applies a surcharge for the consumption of regulated retail roaming services in excess of any limits under any fair use policy, it shall meet the following requirements (excluding VAT):

(a) any surcharge applied for regulated roaming calls made, regulated roaming SMS messages sent and regulated data roaming services shall not exceed the maximum wholesale charges provided for in Articles ~~107~~(2), ~~119~~(1) and 12(1), respectively;

~~(b) the sum of the domestic retail price and any surcharge applied for regulated roaming calls made, regulated roaming SMS messages sent or regulated data roaming services shall not exceed EUR 0,19 per minute, EUR 0,06 per SMS message and EUR 0,20 per megabyte used, respectively;~~



~~(eb) any surcharge applied for regulated roaming calls received shall not exceed  
⇒ the single maximum Union-wide mobile voice termination rates set for that year  
in accordance with Article 75(1) of Directive (EU) 2018/1972. Where the  
Commission decides, following its review of the delegated act adopted pursuant to  
Article 75(1) of Directive (EU) 2018/1972, that setting a Union-wide voice  
termination rate is no longer necessary and not to impose a maximum mobile voice  
termination rate, any surcharge applied for regulated roaming calls received shall not  
exceed the rate set by the most recent delegated act adopted pursuant to Article 75 of  
that Directive ⇐ the weighted average of maximum mobile termination rates across  
the Union set out in accordance with paragraph 2.~~

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.

Roaming providers shall charge roaming calls made and received on a per second basis. Roaming providers may apply an initial minimum charging period not exceeding 30 seconds to calls made. Roaming providers shall charge their customers for the provision of regulated data roaming services on a per-kilobyte basis, except for MMS messages, which may be charged on a per-unit basis. In such a case, the retail charge which a roaming provider may levy on its roaming customer for the transmission or receipt of a roaming MMS message shall not exceed the maximum retail charge for regulated data roaming services set out in the first subparagraph.

~~During the period referred to in Article 6f(1), this paragraph shall not preclude offers which provide roaming customers, for a per diem or any other fixed periodic charge, with a certain volume of regulated roaming services consumption on condition that the consumption of the full amount of that volume leads to a unit price for regulated roaming calls made, calls received, SMS messages sent and data roaming services which does not exceed the respective domestic retail price and the maximum surcharge as set out in the first subparagraph of this paragraph.~~

~~2. By 31 December 2015, the Commission shall, after consulting BEREC and subject to the second subparagraph of this paragraph, adopt implementing acts setting out the weighted average of maximum mobile termination rates referred to in point (c) of the first subparagraph of paragraph 1. The Commission shall review those implementing acts annually. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 6(2).~~

~~The weighted average of maximum mobile termination rates shall be based on the following criteria:~~

~~(a) the maximum level of mobile termination rates imposed in the market for wholesale voice call termination on individual mobile networks by the national regulatory authorities in accordance with Articles 7 and 16 of the Framework Directive and Article 13 of the Access Directive, and~~

~~(b) the total number of subscribers in Member States.~~

23. Roaming providers may offer, and roaming customers may deliberately choose, a roaming tariff other than one set in accordance with Articles 5 6a, 66b, 76e and paragraph 1 of this Article, by virtue of which roaming customers benefit from a different tariff for regulated

roaming services 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 first subparagraph, roaming providers shall apply a tariff set in accordance with Articles 5 ~~6a~~ and ~~66b~~, and paragraph 1 of this Article to all existing and new roaming customers automatically.

Any roaming customer may, at any time, request to switch to or from a tariff set in accordance with Articles 5 ~~6a~~, ~~66b~~, ~~76e~~, and paragraph 1 of this Article. When roaming customers deliberately choose to switch from or back to a tariff set in accordance with Articles 5 ~~6a~~, ~~66b~~, ~~76e~~ and paragraph 1 of this Article, any switch shall be made within one working day of receipt of the request, shall be free of charge and shall not entail conditions or restrictions pertaining to elements of the subscriptions other than roaming. Roaming providers may delay a switch until the previous roaming tariff has been effective for a minimum specified period not exceeding two months.

34. ⇒ Without prejudice to Part III , Title III of Directive (EU) 2018/1972, ⇐ ~~Roaming~~ providers shall ensure that a contract which includes any type of regulated retail roaming service specifies the ~~main~~ characteristics of that regulated retail roaming service provided, including in particular:

- (a) the specific tariff plan or tariff plans and, for each tariff plan, the types of services offered, including the volumes of communications;
- (b) any restrictions imposed on the consumption of regulated retail roaming services provided at the applicable domestic retail price level, in particular quantified information on how any fair use policy is applied by reference to the main pricing, volume or other parameters of the provided regulated retail roaming service concerned;;

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↓ new

- (c) the quality of service that can reasonably be expected when roaming in the Union.

4. Roaming providers shall ensure that a contract which includes any type of regulated retail roaming service provides information about the types of services that may be subject to increased charges when roaming.

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↓ 2015/2120 Art. 7.5 (adapted)  
⇒ new

5. Roaming providers shall publish the information referred to in ~~the first subparagraph~~ paragraphs 3 ⇐ and 4 ⇐ .

~~Article 6f~~

~~Transitional retail roaming surcharges~~

- ~~1. From 30 April 2016 until 14 June 2017, roaming providers may apply a surcharge in addition to the domestic retail price for the provision of regulated retail roaming services.~~
- ~~2. During the period referred to in paragraph 1 of this Article, Article 6e shall apply *mutatis mutandis*.~~

↓ 531/2012

#### *Article 10 ~~7~~*

### **Wholesale charges for the making of regulated roaming calls**

↓ 2017/920 Art. 1.2 (adapted)  
⇒ new

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 call originating on that visited network, inclusive, among others, of origination, transit and termination costs, shall not exceed a safeguard limit of EUR ~~0,032~~ ⇒ 0,022 ⇐ per minute. That maximum wholesale charge shall, ~~without prejudice to Article 19, remain at EUR 0,032 until 30 June 2022~~ ⇒ decrease to EUR 0,019 per minute on 1 January 2025 and shall, without prejudice to Articles 21, 22 and 23, remain at EUR 0,019 per minute until 30 June 2032 ⇐.
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~~ ⇒ 2032 ⇐.

↓ 531/2012

3. The average wholesale charge referred to in paragraph 1 shall be calculated by dividing the total wholesale roaming revenue received by the total number of wholesale roaming minutes actually used for the provision of wholesale roaming calls within the Union by the relevant operator over the relevant period, aggregated on a per-second basis adjusted to take account of the possibility for the operator of the visited network to apply an initial minimum charging period not exceeding 30 seconds.

#### *Article 11 ~~9~~*

### **Wholesale charges for regulated roaming SMS messages**

↓ 2017/920 Art. 1.3 (adapted)  
⇒ new

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~~ ⇒ 0,004 ⇐ per SMS message ⇒. That maximum wholesale charge shall decrease to EUR 0,003 per SMS message on 1 January 2025, ⇐ and shall, without prejudice to

Articles ~~2149~~, ~~⇒ 22 and 23~~, remain at EUR ~~0,01~~ ~~⇒ 0,003~~ until 30 June ~~⇒ 2032~~ ~~2022~~.

↓ 531/2012

⇒ new

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~~ ~~⇒ 2032~~ ~~⇒ 2022~~.

3. The average wholesale charge referred to in paragraph 1 shall be calculated by dividing the total wholesale revenue received by the visited network operator or home network operator for the origination and transmission of regulated roaming SMS messages within the Union in the relevant period by the total number of such SMS messages originated and transmitted on behalf of the relevant roaming provider or home network operator within that period.

4. The visited network operator shall not levy any charge on a roaming customer's roaming provider or home network operator, separate from the charge referred to in paragraph 1, for the termination of a regulated roaming SMS message sent to a roaming customer while roaming on its visited network.

#### ~~Article 11~~

#### ~~Technical characteristics of regulated roaming SMS messages~~

~~No roaming provider, domestic provider, home network operator or visited network operator shall alter the technical characteristics of regulated roaming SMS messages in such a way as to make them differ from the technical characteristics of SMS messages provided within its domestic market.~~

#### Article 12

#### Wholesale charges for regulated data roaming services

↓ 2017/920 Art. 1.4 (adapted)

⇒ new

1. ~~With effect from 15 June 2017, the~~ 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 ~~⇒ 2,00~~ ~~⇒ 7,70~~ per gigabyte of data transmitted. That maximum wholesale 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~~ ~~⇒ 1,50~~ per gigabyte ~~of data transmitted~~ ~~on 1 January 2020~~ ~~⇒ 2025~~ ~~to EUR 3,00 per gigabyte on 1 January 2021 and to EUR 2,50 per gigabyte on 1 January 2022.~~ ~~It~~ ~~of~~ and ~~of~~ shall, without prejudice to Articles ~~2149~~, ~~⇒ 22 and 23~~ remain at EUR ~~2,50~~ ~~⇒ 1,50~~ per gigabyte of data transmitted until 30 June ~~⇒ 2032~~ ~~⇒ 2022~~.

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↓ 531/2012

⇒ new

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 2032 ⇐ before 30 June 2022.

3. The average wholesale charge referred to in paragraph 1 shall be calculated by dividing the total wholesale revenue received by the visited network or home network operator for the provision of regulated data roaming services in the relevant period by the total number of megabytes of data actually consumed by the provision of those services within that period, aggregated on a per-kilobyte basis on behalf of the relevant roaming provider or home network operator within that period.

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↓ new

### *Article 13*

#### **Wholesale charges for emergency communications**

Without prejudice to Articles 10, 11 and 12, the visited network operator shall not levy on the roaming provider any charge related to the emergency communications initiated by the roaming customer and the transmission of caller location information.

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↓ 531/2012 (adapted)

### *Article 14*

#### **Transparency of retail charges ☒ conditions ☒ for roaming calls and SMS messages**

1. To alert roaming customers to the fact that they will 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 ☒ customers have ☒ notified the roaming provider that he ☒ they do ☒ does not require this service, provide the ☒ customers ☒ customer, automatically by means of a Message Service, without undue delay and free of charge, when he ☒ they ☒ enters a Member State other than that of his ☒ their ☒ 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.

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↓ 2015/2120 Art. 7.7(a)

That basic personalised pricing information shall be expressed in the currency of the home bill provided by the customer's domestic provider and shall include information on:

- (a) any fair use policy that the roaming customer is subject to within the Union and the surcharges which apply in excess of any limits under that fair use policy; and

(b) any surcharge applied in accordance with Article ~~76e~~.

↓ new

Roaming providers shall, except when the roaming 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 the roaming customer enters a Member State other than that of his domestic provider, with information on the potential risk of increased charges due to the use of value added services including a link to a dedicated webpage providing information about the types of services that may be subject to increased costs and, if available, information on value added services number ranges.

↓ 531/2012 (adapted)

~~¶~~ ☒ The basic personalised pricing information referred to in the first subparagraph ☒ shall also include the free-of-charge number referred to in paragraph 2 for obtaining more detailed information ~~and information on the possibility of accessing emergency services by dialling the European emergency number 112 free of charge.~~

On the occasion of each message, a customer shall have the opportunity to give notice to the roaming provider, free of charge and in an easy manner, that he does not require the automatic Message Service. A customer who has given notice that he does not require the automatic Message Service shall have the right at any time and free of charge to require the roaming provider to provide the service again.

Roaming providers shall provide blind or partially-sighted customers with the basic personalised pricing information referred to in the first subparagraph automatically, by voice call, free of charge, if they so request.

↓ 2015/2120 Art. 7.7(b)

The first, second, ~~fifth~~<sup>fourth</sup> and ~~sixth~~<sup>fifth</sup> subparagraphs, with the exception of the reference to the fair use policy and the surcharge applied in accordance with Article ~~76e~~, shall also apply to voice and SMS roaming services used by roaming customers travelling outside the Union and provided by a roaming provider.

↓ 531/2012 (adapted)

2. In addition to ☒ the information provided for in ☒ paragraph 1, customers shall have the right to request and receive, free of charge, and irrespective of their location within the Union, more detailed personalised pricing information on the roaming charges that apply in the visited network to voice calls and SMS, and information on the transparency measures applicable by virtue of this Regulation, by means of a mobile voice call or by SMS. Such a request shall be to a free-of-charge number designated for this purpose by the roaming provider. Obligations provided for in paragraph 1 shall not apply to devices which do not support SMS functionality.



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↓ 2015/2120 Art. 7.7(c)

~~32a.~~ The roaming provider shall send a notification to the roaming customer when the applicable fair use volume of regulated voice, or SMS, roaming services is fully consumed or any usage threshold applied in accordance with Article ~~76e~~ is reached. That notification shall indicate the surcharge that will be applied to any additional consumption of regulated voice, or SMS, roaming services by the roaming customer. Each customer shall have the right to require the roaming provider to stop sending such notifications and shall have the right, at any time and free of charge, to require the roaming provider to provide the service again.

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↓ 2015/2120 Art. 7.7(d)

~~43.~~ Roaming providers shall provide all customers 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.

Roaming providers shall send a reminder at reasonable intervals thereafter to all customers who have opted for another tariff.

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↓ 531/2012

~~54.~~ Roaming providers shall make available information to their customers on how to avoid inadvertent roaming in border regions. Roaming providers shall take reasonable steps to protect their customers from paying roaming charges for inadvertently accessed roaming services while situated in their home Member State.

## *Article 15*

### **Transparency and safeguard mechanisms for retail data roaming services**

1. Roaming providers shall ensure that their roaming customers, both before and after the conclusion of a contract, are kept adequately informed of the charges which apply to their use of regulated data roaming services, in ways which facilitate customers' understanding of the financial consequences of such use and permit them to monitor and control their expenditure on regulated data roaming services in accordance with paragraphs 2 and ~~43~~.

Where appropriate, roaming providers shall inform their customers, before the conclusion of a contract and on a regular basis thereafter, of the risk of automatic and uncontrolled data roaming connection and download. Furthermore, roaming providers shall notify to their customers, free of charge and in a clear and easily understandable manner, how to switch off these automatic data roaming connections in order to avoid uncontrolled consumption of data roaming services.

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↓ 2015/2120 Art. 7.8(a)

2. An automatic message from the roaming provider shall inform the roaming customer that the latter is using regulated data roaming services, and provide basic personalised tariff information on the charges (in the currency of the home bill provided by the customer's

domestic provider) 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.

That basic personalised tariff information shall include information on:

- (a) any fair use policy that the roaming customer is subject to within the Union and the surcharges which apply in excess of any limits under that fair use policy; and
- (b) any surcharge applied in accordance with Article 7 ~~6e~~.

The 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.

A customer who has notified his roaming provider that he does not require the automatic tariff information shall have the right at any time and free of charge to require the roaming provider to provide this service again.

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↓ 2015/2120 Art. 7.8(b)

~~32a~~. The roaming provider shall send a notification when the applicable fair use volume of regulated data roaming service is fully consumed or any usage threshold applied in accordance with Article 7~~6e~~ is reached. That notification shall indicate the surcharge that will be applied to any additional consumption of regulated data roaming services by the roaming customer. Each customer shall have the right to require the roaming provider to stop sending such notifications and shall have the right, at any time and free of charge, to require the roaming provider to provide the service again.

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↓ 2015/2120 Art. 7.8(c)

~~43~~. Each roaming provider shall grant to all their roaming customers the opportunity to opt deliberately and free of charge for a facility which provides in a timely manner information on the accumulated consumption expressed in volume or in the currency in which the roaming customer is billed for regulated data roaming services and which guarantees that, without the customer's explicit consent, the accumulated expenditure for regulated data roaming services over a specified period of use, excluding MMS billed on a per-unit basis, does not exceed a specified financial limit.

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↓ 531/2012 (adapted)

To ~~this~~ ☒ that ☒ end, the roaming provider shall make available one or more maximum financial limits for specified periods of use, provided that the customer is informed in advance of the corresponding volume amounts. One of those limits (the default financial limit) shall be close to, but not exceed, EUR 50 of outstanding charges per monthly billing period (excluding VAT).

Alternatively, the roaming provider may establish limits expressed in volume, provided that the customer is informed in advance of the corresponding financial amounts. One of those limits (the default volume limit) shall have a corresponding financial amount not exceeding EUR 50 of outstanding charges per monthly billing period (excluding VAT).

In addition, the roaming provider may offer to its roaming customers other limits with different, that is, higher or lower, maximum monthly financial limits.

The default limits referred to in the second and third subparagraphs shall be applicable to all customers who have not opted for another limit.

Each roaming provider shall also ensure that an appropriate notification is sent to the roaming customer's mobile device, for example by an SMS message, an e-mail or a pop-up window on the computer, when the data roaming services have reached 80% of the agreed financial or volume limit. Each customer shall have the right to require the roaming provider to stop sending such notifications and shall have the right, at any time and free of charge, to require the provider to provide the service again.

When the financial or volume limit would otherwise be exceeded, a notification shall be sent to the roaming customer's mobile device. That notification shall indicate the procedure to be followed if the customer wishes to continue provision of those services and the cost associated with each additional unit to be consumed. If the roaming customer does not respond as prompted in the notification received, the roaming provider shall immediately cease to provide and to charge the roaming customer for regulated data roaming services, unless and until the roaming customer requests the continued or renewed provision of those services.

Whenever a roaming customer requests to opt for or to remove a financial or volume limit facility, the change shall be made within one working day of receipt of the request, shall be free of charge, and shall not entail conditions or restrictions pertaining to other elements of the subscription.

54. Paragraphs 2 and ~~43~~ shall not apply to machine-to-machine devices that use mobile data communication.

~~65.~~ Roaming providers shall take reasonable steps to protect their customers from paying roaming charges for inadvertently accessed roaming services while situated in their home Member State. This shall include informing customers on how to avoid inadvertent roaming in border regions.

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↓ 2015/2120 Art. 7.8(d) (adapted)

~~76.~~ This Article, with the exception of paragraph ~~65~~, ~~of~~ the second subparagraph of paragraph 2 and ~~of~~ paragraph ~~32a~~, and subject to the second and third subparagraphs of this paragraph, shall also apply to data roaming services used by roaming customers travelling outside the Union and provided by a roaming provider.

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↓ 531/2012

Where the customer opts for the facility referred to in the first subparagraph of paragraph 3, the requirements provided in paragraph ~~43~~ shall not apply if the visited network operator in

the visited country outside the Union does not allow the roaming provider to monitor its customers' usage on a real-time basis.

In such a case the customer shall be notified by an SMS message when entering such a country, without undue delay and free of charge, that information on accumulated consumption and the guarantee not to exceed a specified financial limit are not available.

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↓ new

#### *Article 16*

##### **Transparency on the means of access to emergency services**

Roaming providers shall ensure that their roaming customers are kept adequately informed on the means of access to emergency services in the visited Member State.

An automatic message from the roaming provider shall inform the roaming customer that the latter may access emergency services free of charge by calling the single European emergency number '112' and by alternative means of access to emergency services through emergency communications mandated in the visited Member State. The information shall be delivered to the roaming customer's mobile device by an SMS message, every time the roaming customer enters a Member State other than that of his domestic provider. It shall be provided free of charge at the moment the roaming customer initiates a roaming service, by an appropriate means adapted to facilitate its receipt and easy comprehension.

#### *Article 17*

##### **Database for numbers of value added service**

BEREC shall establish and maintain a single Union-wide database of value added services numbering ranges in each Member State to be made accessible for national regulatory authorities and operators. The database shall be established by 31 December 2023. To that end, the NRA or other competent authorities shall, by electronic means, provide the necessary information and the relevant updates to BEREC without undue delay.

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↓ 531/2012

#### *Article 18 ~~16~~*

##### **Supervision and enforcement**

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

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↓ 2015/2120 Art. 7.9(a)

National regulatory authorities shall strictly monitor and supervise roaming providers availing themselves of Articles ~~66b~~, ~~76e~~ and ~~96e~~(3).

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↓ 2017/920 Art. 1.5(a)

2. National regulatory authorities and, where relevant, BEREC shall make up-to-date information on the application of this Regulation, in particular Articles ~~56a~~, ~~66b~~, ~~76e~~, ~~96e~~, ~~107~~, ~~119~~, and 12, publicly available in a manner that enables interested parties to have easy access to it.

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↓ 531/2012 (adapted)

3. National regulatory authorities shall, in preparation for the review provided for in Article ~~1921~~, monitor developments in wholesale and retail charges for the provision to roaming customers of voice and data communications services, including SMS and MMS, including in the outermost regions referred to in Article 349 of the Treaty ~~on the Functioning of the European Union~~. National regulatory authorities shall also be alert to the particular case of inadvertent roaming in the border regions of neighbouring Member States and monitor whether traffic-steering techniques are used to the disadvantage of customers.

National regulatory authorities shall monitor and collect information on inadvertent roaming and take appropriate measures.

4. National regulatory authorities shall have the power to require undertakings subject to obligations under this Regulation to supply all information relevant to the implementation and enforcement of this Regulation. Those undertakings shall provide such information promptly on request and in accordance with time limits and level of detail required by the national regulatory authority.

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↓ 2017/920 Art. 1.5(b)

~~54a~~. Where a national regulatory authority considers information to be confidential 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 prevent the timely sharing of information between the national regulatory authority, the Commission, BEREC and any other national regulatory authorities concerned for the purposes of reviewing, monitoring and supervising the application of this Regulation.

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↓ 531/2012

~~65~~. National regulatory authorities may intervene on their own initiative in order to ensure compliance with this Regulation. In particular, they shall, where necessary, make use of the powers under Article ~~615~~ of ~~the Access~~ Directive (EU) 2018/1972 to ensure adequate access and interconnection in order to guarantee the end-to-end connectivity and interoperability of roaming services, for example where customers are unable to exchange regulated roaming SMS messages with customers of a terrestrial public mobile communications network in another Member State as a result of the absence of an agreement enabling the delivery of those messages.

~~76~~. Where a national regulatory authority finds that a breach of the obligations set out in this Regulation has occurred, it shall have the power to require the immediate cessation of such a breach.

## Article ~~19~~<sup>47</sup>

### Dispute resolution

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 ~~26~~<sup>20</sup> and ~~27~~<sup>21</sup> of ~~the Framework~~ Directive (EU) 2018/1972 shall apply.

↓ 2017/920 Art. 1.6  
⇒ new

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 Articles ~~26~~<sup>20</sup> or ~~27~~<sup>21</sup> of the Directive (EU) 2018/1972. In such a case, the competent national regulatory authority or authorities ~~may consult~~ ⇒ shall notify the dispute to ⇒ BEREC ⇒ in order to bring about a consistent resolution of the dispute ~~about the action to be taken in accordance with the Framework Directive, the Specific Directives or this Regulation to resolve the dispute~~. Where BEREC has been consulted, the competent national regulatory authority or authorities shall await BEREC's opinion before taking action to resolve the dispute.

↓ 531/2012 (adapted)  
⇒ new

2. In the event of an unresolved dispute involving a consumer or end-user and concerning an issue falling within the scope of this Regulation, the Member States shall ensure that the out-of-court dispute resolution procedures laid down in Article ~~25~~<sup>34</sup> of ~~the Universal Service~~ Directive (EU) 2018/1972 are available.

## Article ~~20~~<sup>48</sup>

### Penalties

Member States shall lay down the rules on penalties applicable to infringements of this Regulation, and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall ⇒, without delay, ⇐ notify those provisions to the Commission by 30 June 2013 ☒ of those rules and measures ☒ and ~~shall notify it without delay~~ of any subsequent amendment affecting them.

↓ 2015/2120 Art. 7.10 (adapted)

## Article ~~21~~<sup>49</sup>

### Review

~~1. By 29 November 2015, the Commission shall initiate a review of the wholesale roaming market with a view to assessing measures necessary to enable abolition of retail~~



~~roaming surcharges by 15 June 2017. The Commission shall review, inter alia, the degree of competition in national wholesale markets, and in particular shall assess the level of wholesale costs incurred and 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 developments in competition in the retail roaming markets and any observable risks of distortion of competition and investment incentives in domestic and visited markets. In assessing measures necessary to enable the abolition of retail roaming surcharges, the Commission shall take into account the need to ensure that the visited network operators are able to recover all costs of providing regulated wholesale roaming services, including joint and common costs. The Commission shall also take into account the need 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.~~

~~2. By 15 June 2016, the Commission shall submit a report to the European Parliament and to the Council on the findings of the review referred to in paragraph 1.~~

~~That report shall be accompanied by an appropriate legislative proposal preceded by a public consultation, to amend the wholesale charges for regulated roaming services set out in this Regulation or to provide for another solution to address the issues identified at wholesale level with a view to abolishing retail roaming surcharges by 15 June 2017.~~

↓ 2017/920 Art. 1.7(a) (adapted)  
⇒ new

~~31. In addition, the Commission shall, 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 any relevant BEREC report. The Commission shall subsequently, after consulting BEREC, submit biennial~~ ⇒ two ⇐ ~~reports to the European Parliament and to the Council, accompanied, if appropriate, by a legislative proposal to amend~~ ⇒ Where necessary, after submitting each report, the Commission shall adopt a delegated act pursuant to Article 22 amending ⇐ the maximum wholesale charges for regulated roaming services laid down in this Regulation. The first such report shall be submitted by ~~15 December 2019~~ ⇒ 30 June 2025 and the second by 30 June 2029 ⇐.

~~Those biennial~~ ⊗ The ⊗ 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 ⇒ and of the access to the different network technologies and generations ⇐;
- (b) the degree of competition in both the retail and wholesale roaming markets, in particular the ⇒ actual wholesale rates paid by the operators and the ⇐ competitive situation of small, independent or newly started operators, and MVNOs, including the competition effects of commercial agreements, ⇒ of traffic traded on trading platforms and similar instruments ⇐ and the degree of interconnection between operators;

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↓ new

(c) the evolution of the machine-to-machine roaming;

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↓ 2017/920 Art. 1.7(a)

(~~ed~~) the extent to which the implementation of the ~~structural~~ measures provided for in Article 3 ~~and 4, and~~, in particular, on the basis of the information provided by the national regulatory authorities, of the procedure for prior authorisation laid down in Article 3(6), has produced results in the development of competition in the internal market for regulated roaming services;

(~~ec~~) the evolution of the retail tariff plans available;

(~~ef~~) changes in data consumption patterns for both domestic and roaming services;

(~~fg~~) 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 ~~76e~~;

(~~gh~~) the ability of visited network operators to recover the efficiently incurred costs of providing regulated wholesale roaming services;

(~~hi~~) the impact of the application of fair use policies by operators in accordance with Article ~~86d~~, including the identification of any inconsistencies in the application and implementation of such fair use policies;~~e~~

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↓ new

(j) the extent to which roaming customers and operators face problems in relation to value added services;

(k) the application of the measures of this Regulation on emergency communications.

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↓ 2017/920 Art. 1.7(b)

⇒ new

24. In order to assess competitive developments in the Union-wide roaming markets, BEREC shall collect data regularly 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 ⇒, on the use of trading platforms and similar instruments, on the development of machine-to-machine roaming, and on the extent to which wholesale roaming agreements cover quality of service and give access to different network technologies and generations. BEREC shall also collect data regularly from national regulatory authorities on the application of fair use policy by operators, the developments of domestic-only tariffs, the application of the sustainability mechanisms and complaints on roaming. When consulted pursuant to paragraph 1, BEREC shall collect and provide additional information on transparency, the application of measures on emergency communication and on value added services ⇐.

It shall also collect data on the wholesale roaming agreements not subject to the maximum wholesale roaming charges provided for in Article ~~107~~, ~~119~~ or 12 and on the implementation of contractual measures at wholesale level aiming 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.

Those data shall be notified to the Commission at least  $\Rightarrow$  once  $\Leftarrow$  ~~twice~~ a year. The Commission shall make them public.

On the basis of data collected, BEREC shall 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 providers of roaming services, 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 collect information annually 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.~~

 new

## Article 22

### Revision of the maximum wholesale charges

The Commission shall, taking utmost account of the opinion of BEREC, adopt a delegated act in accordance with Article 23 to amend the maximum wholesale charges that a visited network operator can levy on the roaming provider for the provision of regulated voice, SMS or data roaming services by means of that visited network under Articles 10, 11 and 12.

To that end, the Commission shall:

- (a) comply with the principles, criteria and parameters set out in Annex I;
- (b) take into account the current average wholesale rates charged across the Union and the need to leave appropriate economic space for the commercial market to evolve;
- (c) take into account market information provided by BEREC, national regulatory authorities or, directly, by undertakings providing electronic communications networks and services.

## Article 23

### Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 21 and 22 shall be conferred on the Commission for an indeterminate period of time from 1 January 2025.

3. The delegation of power referred to in Articles 21 and 22 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 21 and 22 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by one month at the initiative of the European Parliament or of the Council.

↓ 531/2012 (adapted)

⇒ new

*Article ~~24~~ 20*

### **Notification requirements**

Member States shall notify to the Commission the identity of the national regulatory authorities responsible for carrying out tasks under this Regulation.

*Article ~~25~~ 21*

### **Repeal**

Regulation ~~(EC) No 717/2007~~ ☒ (EU) No 531/2012 ☒ is repealed ~~in accordance with Annex I with effect from 1 July 2012.~~

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex III.

*Article ~~26~~ 22*

### **Entry into force and expiry**

This Regulation shall enter into force on ~~the day following that of its publication in the Official Journal of the European Union~~ ☒ 1 July 2022 ☒ ~~and its provisions shall apply from that day save as otherwise provided for in specific Articles.~~

It shall expire on 30 June ~~2022~~ ⇒ 2032 ⇐.

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*

## LEGISLATIVE FINANCIAL STATEMENT

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

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

#### 1.2. Policy area(s) concerned (*Programme cluster*)

Single Market

Electronic communications – EU roaming policy

2020 Work Programme - Europe for the Digital Age – Digital for consumers

#### 1.3. The proposal/initiative relates to:

☐ a new action

☐ a new action following a pilot project/preparatory action<sup>87</sup>

☐ the extension of an existing action

☒ a merger or redirection of one or more actions towards another/a new action

#### 1.4. Grounds for the proposal/initiative

##### 1.4.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

The aim of the proposal is to extend the rules regulating the EU-wide roaming market beyond 2022, while amending the maximum wholesale charges, bringing in new measures to ensure a genuine 'roam-like-at-home' (RLAH) experience while roaming and repealing other redundant measures. In the interest of clarity, the proposal is presented in the form of a recast of Regulation (EU) No 531/2012, which has been amended several times in recent years.

The new Regulation will enter into force on 1 July 2022, ensuring continuity with the previous Regulation (EU) No 531/2012, which expires on 30 June 2022. As a regulation, the legal act will apply automatically and uniformly to all EU countries as soon as it enters into force, without needing to be transposed into national law. It will be binding in its entirety on all EU countries.

As to the database for value added service numbering, the Body of European Regulators for Electronic Communications (BEREC) is mandated to establish it by 31 December 2023.

Regulation (EU) 2018/1971 (the BEREC regulation) explicitly provides that Regulation (EU) No 531/2012 (the roaming regulation subject to this recast)

<sup>87</sup> As referred to in Article 58(2)(a) or (b) of the Financial Regulation.



complements and supports, in so far as EU-wide roaming is concerned, the rules provided for by the regulatory framework for electronic communications and lays down certain tasks for BEREC.

Article 3(1) of Regulation (EU) 2018/1971, which lays down the ‘objectives of BEREC’ provides that BEREC act within the scope of Regulations (EU) No 531/2012. Article 4 of Regulation (EU) 2018/1971, which sets out the regulatory tasks of BEREC also provides that it carries out other tasks assigned to it by EU legal acts, in particular by Regulations (EU) No 531/2012.

Regulation (EU) 2018/1971 therefore mandates BEREC to carry out tasks assigned to it by the Roaming Regulation. BEREC will perform the tasks, including the creation and maintenance of the value added services database, with no additional human and financial resources.

- 1.4.2. *Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.*

#### Reasons for action at European level (ex-ante)

As observed by the Advocate General in the landmark case C-58/08 Vodafone, “the differences in price between calls made within one’s own Member State and those made while roaming could reasonably be regarded as discouraging the use of cross-border services such as roaming. Such discouragement of cross-border activities has the potential to impede the establishment of an internal market in which free movement of goods, services and capital is ensured. Indeed, there is no clearer cross-border activity in the mobile telecoms sector than roaming itself.”<sup>88</sup>

The fact that services are cross-border justifies action taken at EU level because Member States cannot by themselves address the issue effectively and national regulatory authorities have been unable to autonomously tackle this problem<sup>89</sup>.

In its judgment of 8 June 2010 in the above case C-58/08 Vodafone, the Court of Justice found that, in the past, “the high level of retail charges had been regarded as a persistent problem by National Regulatory Authorities (NRAs), public authorities and consumer protection associations throughout the Community and that attempts to solve the problem using the existing legal framework had not had the effect of lowering charges”<sup>90</sup>.

Similarly, the issues addressed by the new measures included in the proposal are also strictly linked to and affected by the cross border character of roaming. Therefore they cannot be adequately addressed by the Member States and action at EU level would be more effective than action at national level. As a matter of fact, the underlying problems that the new proposed measures seek to remedy can potentially result in either discouraging the use of roaming, creating barriers in the use of mobile services and applications while travelling in the single market, or, more in general, disrupting the smooth functioning of the EU-wide roaming market. According to the

<sup>88</sup> Opinion of Advocate General Póitíes Maduro delivered on 1 October 2009 in Case C-58/08 ECLI:EU:C:2009:596

<sup>89</sup> See December 2005 ERG letter to the Directorate general of the Commission's DG Information Society.

<sup>90</sup> Judgment of the Court of Justice of 8 June 2010, Vodafone, C-58/08, ECLI:EU:C:2010:321, paragraph 40

relevant case law, this is an objective that must be pursued and is best achieved at EU level<sup>91</sup>.

#### Expected generated EU added value (ex-post)

The expected generated EU added value of this proposal is to (i) maintain the benefits already produced by the EU roaming rules in terms of a high level of consumer protection, increased trust and confidence and wider choice for end-users, (ii) ensure a sustainable provision of RLAH and cost recovery at wholesale level and (iii) address unresolved issues while roaming, which could still reasonably be regarded as discouraging people from using this typically cross-border service.

#### 1.4.3. *Lessons learned from similar experiences in the past*

EU roaming rules have contributed to a high level of consumer protection that promotes trust and confidence and a wider choice for users. The rapid and massive increase in roaming traffic since June 2017 has shown that RLAH reform has met its objective of unleashing the untapped demand for mobile consumption by travellers in the EU. Specifically, between summer 2016 and summer 2018, retail roaming traffic tripled for voice and increased twelve-fold for data. In this sense, the review confirms the success of the reform and that the roaming market functions well in general under the roaming rules. The proposal aims to continue with the approach of gradually decreasing wholesale price caps and ensuring cost recovery, as these measures, together with the safeguards mechanisms (sustainability derogations and fair use policy), have proved essential in ensuring the sustainable provision of RLAH.

#### 1.4.4. *Compatibility and possible synergy with other appropriate instruments*

Abolishing retail roaming surcharges marked an essential step towards creating an EU-wide digital single market and to making it function properly.

In particular, regulating the roaming market to establish RLAH throughout the EU helped achieve the policy objective of ensuring that well-functioning markets provide access for European customers to high-performance wireless broadband infrastructure at affordable prices across the EU.

Given the above, it is necessary to avoid undermining the achievements made when Regulation (EU) No 531/2012 expires on 30 June 2022. Therefore, the proposal to review the existing roaming rules was included in the 2020 Commission work programme under the headline ambition “A Europe fit for the Digital Age” addressing the specific objective “Digital for consumers”.

The proposal complements the European Electronic Communication Code (EECC)<sup>92</sup>, to be transposed by the Member States by 21 December 2020. The EECC not only aims to enable high connectivity and 5G deployment for the benefit of all Europeans, but also to provide effective consumer protection in the context of e-communications, boosting their choice by increasing the level of transparency of information and specific rules on maximum contract duration and number portability.

<sup>91</sup> Judgment of the Court of Justice of 8 June 2010, Vodafone, C-58/08, ECLI:EU:C:2010:321, paragraph 76-78

<sup>92</sup> Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast) (OJ L 321, 17.12.2018, p. 36-214).

The EECC also aims to provide end-users with free-of-charge access to emergency services through emergency communications and to ensure that caller location information is available. The EECC is without prejudice to the provisions on roaming (prior to this proposal enshrined in Regulation (EU) No 531/2012).

## 1.5. Duration and financial impact

### ☒ limited duration

- ☒ in effect from 01/07/2022 to 30/06/2032
- ☐ Financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

### ☐ unlimited duration

- Implementation with a start-up period from YYYY to YYYY,
- followed by full-scale operation.

## 1.6. Management mode(s) planned<sup>93</sup>

### ☒ Direct management by the Commission

- ☐ by its departments, including by its staff in the Union delegations;
- ☐ by the executive agencies

### ☐ Shared management with the Member States

### ☒ Indirect management by entrusting budget implementation tasks to:

- ☐ third countries or the bodies they have designated;
- ☐ international organisations and their agencies (to be specified);
- ☐ the EIB and the European Investment Fund;
- ☒ bodies referred to in Articles 70 and 71 of the Financial Regulation;
- ☐ public law bodies;
- ☐ bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
- ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
- ☐ persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.
- *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

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<sup>93</sup> Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: <https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx>

BEREC will perform the data collection and reporting activities and will also establish and maintain an EU-wide database for value added services numbering ranges by 31 December 2023. The database is intended as a transparency tool to enable NRAs and operators to have direct access to information on which numbering ranges can generate higher costs (termination rates) in all Member States. The BEREC mandate covers the above mentioned tasks. BEREC will perform the tasks, including the creation and maintenance of the value added services database, with no additional human and financial resources.

## **2. MANAGEMENT MEASURES**

### **2.1. Monitoring and reporting rules**

*Specify frequency and conditions.*

The Commission, BEREC and the NRAs jointly monitor and report on the functioning of the roaming market and the implementation of the measures included in the Roaming Regulation as provided for in Art.18 on supervision and enforcement and Article 21 on review, which also define a data collection and reporting system.

### **2.2. Management and control system(s)**

#### **2.2.1. *Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed***

Not relevant as the initiative mainly implies administrative expenditures under heading 7.

#### **2.2.2. *Information concerning the risks identified and the internal control system(s) set up to mitigate them***

Idem.

#### **2.2.3. *Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)***

Idem.

### **2.3. Measures to prevent fraud and irregularities**

*Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.*

Idem.



### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

#### 3.1. Heading of the multiannual financial framework and new expenditure budget line(s) proposed

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Heading.....]	Diff./Non-diff. <sup>94</sup>	from EFTA countries <sup>95</sup>	from candidate countries <sup>96</sup>	from third countries	within the meaning of Article [21(2)(b)] of the Financial Regulation
7	Number: 20 02 06 Heading 7: Management expenditure					
1	Number: 02.200403 Heading 1: Single Market Innovation and Digital Definition and implementation of the Union's policy in the field of electronic communications	/Non-diff.	/NO	/NO	/NO	/NO

<sup>94</sup> Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

<sup>95</sup> EFTA: European Free Trade Association.

<sup>96</sup> Candidate countries and, where applicable, potential candidates from the Western Balkans.

### 3.2. Estimated impact on expenditure

#### 3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework		1	Single Market Innovation and Digital								
			2021	2022	2023	2024	2025	2026	2027	Post 2027	TOTAL
Operational appropriations (split according to the budget lines listed under 3.1	Commitments	(1)	0	0,150	0	0,705	0	0,150	0	0,855	1,860
	Payments	(2)	0	0	0,075	0,155	0,550	0,075	0,075	0,930	1,860
Appropriations of an administrative nature financed from the envelope of the programme <sup>97</sup>	Commitments = Payments	(3)	0	0	0	0	0	0	0	0	0
TOTAL appropriations for the envelope of the programme	Commitments	=1+3	0	0,150	0	0,705	0	0,150	0	0,855	1.860
	Payments	=2+3	0	0	0,075	0,155	0,550	0,075	0,075	0,930	1,860

<sup>97</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

Heading of multiannual financial framework	7	‘Administrative expenditure’
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EUR million (to three decimal places)

	2021	2022	2023	2024	2025	2026	2027	Post 2027	TOTAL
Human resources		0,216	0,431	0,431	0,431	0,431	0,431	1,940	4,310
Other administrative expenditure	0	0	0,020	0,020	0	0	0,020	0,020	0,080
<b>TOTAL appropriations under HEADING 7 of the multiannual financial framework</b>	<b>0</b>	<b>0,216</b>	<b>0,451</b>	<b>0,451</b>	<b>0,431</b>	<b>0,431</b>	<b>0,451</b>	<b>1,960</b>	<b>4,390</b>
(Total commitments = Total payments)									

EUR million (to three decimal places)

	2021	2022	2023	2024	2025	2026	2027	Post 2027	TOTAL
<b>TOTAL appropriations across HEADINGS of the multiannual financial framework</b>	<b>0</b>	<b>0,366</b>	<b>0,431</b>	<b>1,156</b>	<b>0,451</b>	<b>0,581</b>	<b>0,431</b>	<b>2,835</b>	<b>6,250</b>
	<b>0</b>	<b>0,216</b>	<b>0,506</b>	<b>0,606</b>	<b>1,001</b>	<b>0,506</b>	<b>0,506</b>	<b>2,910</b>	<b>6,250</b>

### 3.2.2. Summary of estimated impact on appropriations of an administrative nature

- ☐ The proposal/initiative does not require the use of appropriations of an administrative nature
- ☒ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

Years	2021	2022	2023	2024	2025	2026	2027	TOTAL including up to 2032
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HEADING 7 of the multiannual financial framework								
Human resources	0	0,216	0,431	0,431	0,431	0,431	0,431	4,310
Other administrative expenditure	0	0	0,020	0,020	0	0	0,020	0,060
<b>Subtotal HEADING 7 of the multiannual financial framework</b>	<b>0</b>	<b>0,216</b>	<b>0,451</b>	<b>0,451</b>	<b>0,431</b>	<b>0,431</b>	<b>0,451</b>	<b>4,370</b>

Outside HEADING 7 <sup>98</sup> of the multiannual financial framework								
Human resources								
Other expenditure of an administrative nature	0	0	0	0	0	0	0	0
<b>Subtotal outside HEADING 7 of the multiannual financial framework</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>TOTAL</b>	<b>0</b>	<b>0,216</b>	<b>0,451</b>	<b>0,451</b>	<b>0,431</b>	<b>0,431</b>	<b>0,451</b>	<b>4,370</b>
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The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

The budget foreseen for 2022 takes into account only half a year, since the Regulation (EU) No 531/2012 expires on 30 June 2022.

<sup>98</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

### 3.2.2.1. Estimated requirements of human resources

- ☐ The proposal/initiative does not require the use of human resources.
- ☒ The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full time equivalent units*

Years		2021	2022	2023	2024	2025	2026	2027
<b>• Establishment plan posts (officials and temporary staff)</b>								
Headquarters and Commission's Representation Offices			2	2	2	2	2	2
Delegations								
Research								
<b>• External staff (in Full Time Equivalent unit: FTE) - AC, AL, END, INT and JED <sup>99</sup></b>								
<b>Heading 7</b>								
Financed from HEADING 7 of the multiannual financial framework	- at Headquarters		1,5	1,5	1,5	1,5	1,5	1,5
	- in Delegations							
Financed from the envelope of the programme <sup>100</sup>	- at Headquarters							
	- in Delegations							
Research								
Other (specify)								
<b>TOTAL</b>			<b>3,5</b>	<b>3,5</b>	<b>3,5</b>	<b>3,5</b>	<b>3,5</b>	<b>3,5</b>

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	<p>2 FTEs per year, analysed as follows:</p> <ul style="list-style-type: none"> <li>- coordinating the roaming review and related Commission reports, reviewing Commission implementing acts, comitology (CoCoM), preparing and adopting of delegated acts, establishing an external expert group, cooperating with BEREC and helping develop Guidelines.</li> <li>- monitoring, coordinating the collection and analysis of data, conducting joint COM-BEREC surveys, cooperating with BEREC and JRC coordination.</li> <li>- forward-looking analysis (technological and business developments)</li> <li>- ensuring procurement, coordinating and managing of external studies (including administrative agreements with JRC, study on technological developments, cost models for the assessment of wholesale caps).</li> <li>- legal analysis, replies to parliamentary questions and other questions, handling of citizens and other complaints, infringement proceedings</li> </ul>
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<sup>99</sup> AC= Contract Staff; AL = Local Staff; END = Seconded National Expert; INT = agency staff; JPD= Junior Professionals in Delegations.

<sup>100</sup> Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

External staff	<p>0,5 FTE CA and 1 FTE END, to contribute to the following tasks:</p> <ul style="list-style-type: none"> <li>- collecting and analysing data, legal analysis, replies to parliamentary questions and other questions, handling complaints</li> <li>- contributing to the roaming review and forward-looking analysis (technological and business developments)</li> <li>- contributing to the coordination and management of external studies (including administrative agreement with JRC, study on technological developments, cost models for the assessment of wholesale caps).</li> </ul>
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### 3.2.3. Third-party contributions

The proposal/initiative:

- ☒ does not provide for co-financing by third parties
- ☐ provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

Years	2021	2022	2023	2024	2025	2026	2027	TOTAL
Specify the co-financing body								
TOTAL appropriations co-financed								

### 3.2.4. Compatibility with the current multiannual financial framework

The proposal/initiative:

- ☒ can be fully financed through redeployment within the relevant heading of the Multiannual Financial Framework (MFF).

Operational expenses mentioned in 3.2.1 will be covered through redeployment within the financial programming of the operational budget line 02 20 04 03.

- ☐ requires use of the unallocated margin under the relevant heading of the MFF and/or use of the special instruments as defined in the MFF Regulation.
- ☐ requires a revision of the MFF.

### 3.3. Estimated impact on revenue

- ☒ The proposal/initiative has no financial impact on revenue.
- ☐ The proposal/initiative has the following financial impact: pag.17
  - ☐ on own resources
  - ☐ on other revenue

please indicate, if the revenue is assigned to expenditure lines ☐

EUR million (to three decimal places)

Budget revenue line:	Impact of the proposal/initiative <sup>101</sup>						
	2021	2022	2023	2024	2025	2026	2027

<sup>101</sup> As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.

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For assigned revenue, specify the budget expenditure line(s) affected.

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).