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#### COVER NOTE

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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2021) 29 final
Subject:	COMMISSION STAFF WORKING DOCUMENT Subsidiarity Grid Accompanying the Proposal for a regulation of the European Parliament and of the Council on roaming on public mobile telecommunications networks within the Union (recast)

Delegations will find attached document SWD(2021) 29 final.

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Brussels, 24.2.2021  
SWD(2021) 29 final

## COMMISSION STAFF WORKING DOCUMENT

### Subsidiarity Grid

#### *Accompanying the*

### **Proposal for a regulation of the European Parliament and of the Council on roaming on public mobile telecommunications networks within the Union (recast)**

{COM(2021) 85 final} - {SEC(2021) 90 final} - {SWD(2021) 27 final} -  
{SWD(2021) 28 final}

## **1. Can the EU act? What is the legal basis and competence of the EU's intended action?**

### **1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?**

The legal basis for the review of Regulation (EU) No 531/2012 is Article 114 of the Treaty on the Functioning of the European Union (TFEU). This covers measures adopted in accordance with the ordinary legislative procedure aimed at establishing or ensuring the proper functioning of the single market as provided for in Article 26 of the TFEU. The single market comprises an area without internal frontiers designed to allow goods, people, services and capital to move freely in accordance with the provisions of the Treaties.

This initiative is 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'. It is a follow-up to the Commission's review report adopted on 29 November 2019<sup>1</sup>.

### **1.2 Is the EU competence represented by this Treaty article exclusive, shared or supporting in nature?**

According to Article 4(2) of the TFEU, shared competence between the EU and Member States applies in the principle area of the single market. In the case of EU roaming, as part of the single market policy area, EU competence is shared.

## **2. Subsidiarity principle: Why should the EU act?**

### **2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2?<sup>2</sup>**

- Has there been a wide consultation of stakeholders before proposing the act?
- Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at EU level?

This proposal and the accompanying impact assessment are supported by a wide consultation of stakeholders. The Commission collected the views of all relevant stakeholder groups, in particular those of consumers and their associations, national regulatory authorities (NRAs), the Body of European Regulators for Electronic Communications (BEREC), mobile network operators (MNOs), mobile virtual network operators (MVNOs), business stakeholders (including small and medium-sized enterprises/SMEs), government authorities, industry associations and other stakeholders.

<sup>1</sup> Report on the review of the roaming market, COM(2019)616 final, available [here](#).

<sup>2</sup> See <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN>

All these different stakeholder groups were expected to have important information and insights to help prepare the impact assessment. Annex 2 to the impact assessment outlines the consultation activities in detail.

1. **A public consultation** was carried out between 19 June and 11 September 2020, with 175 replies received. In particular, the consultation served to collect views on (i) retail roaming services, in particular on the impact of the possible introduction of various clarifications and updates relevant for consumers on the quality of service, value added services and emergency communications in the Roaming Regulation; (ii) the provision of wholesale roaming services; and (iii) the administrative burden of the regulation and impacts of possible simplifications.
2. **Consultation of BEREC and market monitoring**
  - BEREC opinion on the functioning of the roaming market;
  - BEREC input on the Commission's request for it to prepare a legislative proposal for the new roaming regulation<sup>3</sup>; BEREC data collection activities;
  - BEREC semi-annual international roaming benchmark reports<sup>4</sup>;
  - BEREC annual report on the transparency and comparability of roaming tariffs<sup>5</sup>;
  - data collection by BEREC;
  - joint Commission/BEREC online survey.
3. **Targeted interviews on roaming market evolution with different players involved in the global connectivity value chain.**
4. **Targeted online survey** on the potential impact of technological evolution on the roaming market<sup>6</sup> (SMART study 2018/0012).
5. **Flash Eurobarometer Survey**<sup>7</sup>.

The impact assessment (section 3) includes a section on the principle of subsidiarity. Question 2.2 below expands on it.

## **2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain adequate justification regarding conformity with the principle of subsidiarity?**

The text below summarises the arguments presented in section 3 of the impact assessment.

In the roaming sector, EU action is more effective than action taken at national, regional or local level and not only provides added value compared to individual actions by Member States, but is strictly needed for the completion of the single market for electronic communications. EU regulatory intervention on wholesale and retail roaming

<sup>3</sup> BEREC input on Commission request for the preparation of the legislative proposal for the new roaming regulation, 30 June 2020, BoR (20) 131.

<sup>4</sup> The last five benchmark reports (covering 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 report](#) (April 2019 to September 2019).

<sup>5</sup> BEREC Report on Transparency and Comparability of International Roaming Tariffs, available for [2017](#), for [2018](#) and for [2019](#).

<sup>6</sup> For more information on the online survey, see the final report of the study, available [here](#).

<sup>7</sup> Flash Eurobarometer 468 'The end of roaming charges one year later', June 2018, available [here](#).

markets has been necessary for over a decade to improve the conditions for the functioning of the single market for roaming services within the EU.

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>8</sup>

The cross border character of intra-EU roaming justifies action taken at EU level. It is therefore important to highlight the need to keep regulating intra-EU roaming based on the fact that, despite signs of some competition dynamics at both retail and wholesale level, the underlying basic competition conditions have not changed and are unlikely to change in the foreseeable future to such an extent that retail or wholesale regulation of the roaming market could be lifted after the Regulation expires in June 2022.

In addition to the objective of maintaining ‘roam like at home’ (RLAH) rules, this proposal also aims to address unresolved issues in the implementation of Regulation (EU) No 531/2012, in particular with regard to: (i) the quality of service while roaming; (ii) access to emergency services while roaming (especially for roamers with disabilities); (iii) use of value added services while roaming.

All these limitations are strictly linked to the cross-border character of roaming and could result either in discouraging the use of roaming, or more generally in disrupting the smooth functioning of the EU-wide roaming market. According to the relevant case-law, this is also an objective that must be pursued and could best be achieved at EU level<sup>9</sup>.

### **2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?**

In the past, NRAs have already acknowledged that they are unable to autonomously tackle intra-EU roaming due to the cross-border nature of the roaming market. The Court of Justice also 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>10</sup>.

Because of the intrinsic cross-border nature of roaming services, actions at Member State level cannot address the issues linked to roaming in an effective manner.

<sup>8</sup> See Opinion Of Advocate General Poiares Maduro delivered on 1 October 2009 in Case C-58/08 available here:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=72636&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=2824416>

<sup>9</sup> C-58/08 Vodafone, CJEU judgment of 8 June 2010 available here: <http://curia.europa.eu/juris/document/document.jsf?jsessionid=D958030F3463C30DD21AD3EE7CACB774?text=&docid=79665&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=5993673>

<sup>10</sup> C-58/08 Vodafone, CJEU judgment of 8 June 2010.

Against this background, Regulation (EU) No 531/2012 and the proposed review include measures at both wholesale and retail level. In this respect, in the applicable case-law the Court of Justice of the European Union (CJEU) found that wholesale regulation of the roaming market is compliant with the subsidiarity principle in view of the fact 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>11</sup>.

As demonstrated in the roaming review report, the interim review and the public consultation on the review of Regulation (EU) No 531/2012, RLAH rules have provided individuals and businesses with tangible benefits. It is therefore necessary to ensure that mobile customers, both consumers and businesses, continue benefitting from RLAH rules once Regulation (EU) No 531/2012 expires.

A legislative initiative is justified in this area given that the Commission’s review report concludes that the competitive landscape remains largely unchanged and it is not sufficient to ensure continuation of RLAH in the absence of regulation<sup>12</sup>.

(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?

There is the clear cross-border character of intra-EU roaming that justifies action at EU level and implies that actions at Member State level cannot address the issue in an effective manner. In the past, NRAs have acknowledged that they are unable to autonomously tackle this problem due to the cross-border nature of the roaming market. Regulation (EU) No 531/2012 ensures stronger harmonisation in terms of how EU mobile telecoms markets function.

As regards the size of the overall problem, in the absence of regulation, 170 million roaming customers<sup>13</sup> would lose the benefits of staying connected, like at home, while travelling in the EU/EEA. Based on the data collected in the International Roaming BEREC Benchmark Report, in Q3 2019 (i.e. July-September 2019), they generated more than 6.4 billion minutes of voice traffic in total, more than 2.1 billion text messages and more than 240 million GB of data traffic. These were not subject to any kind of roaming surcharge. There would be a risk of losing the consumer surplus causally linked to the roaming rules as confirmed by the counterfactual analysis.

In addition, BEREC, in its input on the Commission’s request for it to prepare this proposal, has not only defined Regulation (EU) No 531/2012 and the introduction of RLAH as ‘a clear success for the end-users and a substantial contribution to the further completion of the single market’, but has also identified room for further improvements,

<sup>11</sup> Ibid., paragraph 77.

<sup>12</sup> As is clear, in particular from recital 1 in the preamble to Regulation No 717/2007 and point 1 of the explanatory memorandum to the proposal which led to the adoption of Regulation No 717/2007, the level of retail charges for international roaming services, at the time of adoption of that Regulation, was high and the relationship between costs and prices was not such as would prevail in fully competitive markets. The excessive retail charges therefore resulted both from wholesale charges levied by the foreign host network operator and, in many cases, from high retail mark-ups charged by the home provider.

<sup>13</sup> International Roaming BEREC Benchmark Report, in Q3 2019 (i.e. July-September 2019).

to be carried out in the context of the forthcoming review on existing roaming rules.

The improvements requested refer in particular to unresolved issues in the implementation of Regulation (EU) No 531/2012, in particular on the regulation of wholesale caps, quality of services and use of value added services.

The Joint Research Centre (JRC) conducted a field study to assess the technical performance and user experience of EU roaming in a sub-set of EU Member States during the first 2 years of the RLAH rules (between October 2017 and October 2019)<sup>14</sup>. Analysis of these results shows that roaming customers experienced a lower quality of service than at home in 13 cases, and in 15 cases a frequently lower quality of service compared to other roaming customers on the visited network. 6 of these roaming customers had a worse experience in both respects. This indicates that in these 6 cases out of 29 (in 5 out of 13 different Member States), the quality of service offered was limited, even though a better quality of service was in practice offered to other roaming customers. Furthermore 21 customers often had a worse roaming experience than at home and a worse experience than what was technically possible on at least one of the networks they visited.

The public consultation results confirm that 30% of the respondents, including MNOs, MVNO/Es and business associations, experience difficulties in gaining wholesale roaming access, in particular to 4G networks.

Disabled end-users are charged for the means of access to emergency services employed by home operators: 56% of operators for text messages and 68% of operators for emergency applications. The responses of the host MNOs confirm that a large proportion of roaming customers living with disabilities might be precluded from having access to emergency services through the alternative means of access deployed in the visited Member States.

The joint 2020 Commission-BEREC online survey shows that 26.5% of the operators that responded say they received complaints from customers about communications related to value added services while roaming in the EEA. 20% of the operators (30% of MNOs and 12.4% of MVNOs) report that they have incurred extra costs resulting from unexpected wholesale charges for communications related to value added services used by their customers while roaming in the EU/EEA. Based on the data collected, the median value of lost revenues is EUR 70 000. The first and third quartile values are EUR 10 000 and EUR 350 000 euros respectively. Few operators report losses in excess of EUR 1 000 000, but we consider these values as outliers. The above do not take into account indirect non-financial impacts to operators, including (as reported in the questionnaire) increased resources, loss of business and reputation and increased consumer complaints.

(b) Would national action or the absence of EU level action conflict with core objectives of the Treaty<sup>15</sup> or significantly damage the interests of other Member States?

<sup>14</sup> JRC quality of service study, SMART 2018/0011.

<sup>15</sup> See [https://europa.eu/european-union/about-eu/eu-in-brief\\_en](https://europa.eu/european-union/about-eu/eu-in-brief_en)



Absence of action would damage the interests of consumers and would fail to enable a digital single market in e-commerce.

In the past, the European Court of Justice found that the EU roaming rules, by establishing a common, coherent framework at EU level, genuinely had the objective of improving the conditions for the functioning of the single market and that they could be adopted on the basis of Article 95 of the Treaty establishing the European Community (TEC) (now Article 114 of the TFEU). The Court also found that, given the importance of the objective of consumer protection under Article 95(3) TEC (now Article 114 of the TFEU), ‘intervention that is limited in time in a market that is subject to competition, which makes it possible, in the immediate future, to 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<sup>16</sup>.’

(c) To what extent do Member States have the ability or possibility to enact appropriate measures?

The mobile communications market remains fragmented in the EU, with no mobile terrestrial network covering all Member States. As a result, in order to provide mobile communications services to their domestic customers travelling within the EU, roaming providers have to purchase wholesale roaming services from, or exchange wholesale roaming services with, operators in a visited Member State.

In addition, the national regulatory authorities responsible for safeguarding and promoting the interests of mobile customers normally resident within their territory are unable to control the behaviour of the visited network operators situated in other Member States on whom 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.

The EU has taken regulatory action on wholesale and retail roaming markets under Article 114 TFEU for over a decade, necessary to improve the conditions for the EU’s single market for roaming services to work properly.

A common, harmonised approach needs to be employed to ensure that users of terrestrial public mobile communication networks do not pay excessive prices for EU-wide roaming services when travelling within the EU. This will boost competition between roaming providers of roaming services, achieve a high level of consumer protection and preserve incentives for both innovation and consumer choice. Given 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.

The same common approach is necessary to intervene on additional aspects (quality of service, value added services, emergency communications) considered under this proposal. This will ensure that customers can have a genuine ‘RLAH experience’ and remove any obstacles that could result either in discouraging the use of roaming or in disrupting the smooth functioning of the EU-wide roaming market. This could impede

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<sup>16</sup> C-58/08 Vodafone, judgment of 8 June 2010.



the establishment of a single market in which free movement services is ensured.

(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?

The EU roaming market consists of several national wholesale markets. With the introduction of RLAH roaming, wholesale prices have fallen and been capped at levels that allowed additional retail roaming charges to be abolished, while ensuring sustainability for roaming operators.

Wholesale roaming rates are agreed in **bilateral negotiations** held twice a year between 'unequal' contractors. Apart from size and multinational reach, the main driver in these negotiations is the capacity of each operator to exchange traffic, i.e. to balance the retail-outbound traffic they buy with the wholesale-inbound traffic they can serve. This often depends on the country/region of the customer base.

National wholesale markets are by nature oligopolistic (dominated by a small group of large sellers) as only MNOs can offer roaming services in visited markets<sup>17</sup>. This situation creates low competitive pressure and has not changed drastically, as confirmed by the study on technological developments and roaming<sup>18</sup> (see Annex 8 for details). Wholesale prices provide further evidence that competition remains imperfect. While they are generally charged well below wholesale caps across Member States, there are differences in the wholesale rates charged between Member States<sup>19</sup>, which can be the result of different underlying costs and/or different competitive environments. At the same time, a number of operators still actually pay wholesale prices at the level of wholesale caps. Operators with weaker negotiating power are therefore often obliged to pay prices at or close to wholesale caps<sup>20</sup>.

The impact of RLAH on operators can vary markedly depending on the traffic flows of the given operator's customer base. Based on its traffic flows, an operator can be classified as an outbinder operator or inbinder operator. An outbinder operator has a customer base that consumes more mobile services abroad (i.e. on the networks of partner operators in other EU/EEA countries) than those consumed by the partner operators' customer base on its own network. Conversely, an inbinder operator has a customer base that consumes fewer mobile services abroad than those consumed by the partner operators' customer base on its own network. Due to tourist flows, operators in Northern European countries are typically net outbinder operators of roaming traffic, whereas operators in Southern European countries are typically inbounders of roaming

<sup>17</sup> Typically, each Member State has 3-4 MNOs. Among those, often not all of them can provide a full range of services (such as full geographic or service coverage) needed to provide services to all roamers. All failures were already presented in SWD (2016) 202 final (the impact assessment for Regulation 2017/92 amending Regulation (EU) 531/2012 as regards rules for wholesale roaming markets) and all still persist.

<sup>18</sup> SMART 2018/12 'Technological developments and roaming' by WIK Consult, July 2019, available [here](#).

<sup>19</sup> According to BEREC's International Roaming Benchmark Report, in Q1 2019 the average wholesale price for voice and data was 55% and 35% of the wholesale cap respectively. When looking at the price charged per operator, 3 out of 4 operators charge on average up to 72% of the wholesale voice cap and up to 60% of the wholesale data cap.

<sup>20</sup> The established caps must be balanced, ensuring cost recovery for the visited network (supplying the wholesale service), whilst reducing the cost to the home operator as much as possible (buying the wholesale service), as RLAH prevents the home operator from charging the retail customer for the used roaming services.

traffic. According to data presented in the roaming review report, 16 out of the 29 countries that provided data (i.e. 28 EU Member States plus Norway) on voice services are net inbounders of roaming voice traffic, while the remaining 13 are net outbounders.

In addition, parts of the market, in particular MVNOs and smaller operators operating in one country and with large outbound roaming imbalances, often pay wholesale roaming prices at, or close to, the cap level.

(e) Is the problem widespread across the EU or limited to a few Member States?

The mobile communications market remains fragmented in the EU, with no mobile network covering all Member States. The risk of losing the benefits of RLAH due to lack of competitive dynamics, market failures and regulator failures is a cross-border problem across the entire single market.

(f) Are Member States overstretched in achieving the objectives of the planned measure?

The proposal is a recast of Regulation (EU) No 531/2012 aimed at maintaining EU rules on roaming while introducing some amendments to the existing legislation. Member States are not overstretched in achieving the objectives as the EU roaming rules are already in place and the introduction of RLAH has proved successful.

Regulation (EU) No 531/2012 faces no substantial implementation problems, as confirmed by overall compliance of mobile operators with the rules, the absence of infringement proceedings, effective enforcement actions at national level and the small number of complaints. As a result, the need for improvements in the current Roaming Regulation is limited. Many of the costs to implement these monitoring and transparency systems have already been incurred. Therefore, in many cases only the additional cost of maintaining those systems needs to be considered.

The proposal includes simplification measures to reduce the administrative and regulatory burden.

Overall, additional administrative costs are limited compared to the sizeable benefits that RLAH brings to individuals and SMEs alike.

(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?

Since only 5 public authorities (3 NRAs and 2 government authorities) participated in the public consultation, it is not possible to report extensively on the different positions of national regional and local authorities. In terms of the Member States' approach to the roaming issue, the fundamental difference lies in the division in outbounder and inbounder countries explained in 2.3(d).

**2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at EU level by reason of scale or effects of that action**

<b>(EU added value)?</b>
(a) Are there clear benefits from action at EU level?
<p>Measures at EU level were introduced as a necessary means to tackling the non-effectiveness of national interventions due to the cross-border nature of the roaming service, which represented an obstacle to a European single market.</p> <p>Measures at EU level have helped reduce the administrative and regulatory burden, provide a high level of consumer protection that promotes trust and confidence and give consumers a wider choice. The rapid and massive increase in roaming traffic since June 2017 has shown that the 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 increased three-fold for voice and twelve-fold for data. In this sense, the review confirms that the reform has been successful and that the roaming market functions well in general under the new rules.</p> <p>The new measures included in the proposal will improve how the single market functions, also contributing to the possibility for end-users to have a genuine ‘RLAH experience’ and addressing possible obstacles to this goal.</p> <p>Reviewed wholesale caps aim to ensure cost recovery for all operators and to address the sustainability challenge, thereby representing an adequate balance between the needs of the different Member States (inbounders and outbounders) that only an EU instrument can ensure. The solution proposed will aim to also ensure flexibility in regulating the caps and a future-proof approach.</p> <p>Measures on value added services aim to establish EU-level solutions to satisfy transparency needs more efficiently than 27 separate national solutions.</p> <p>Measures on quality of service clarifications: the value added of EU action is primarily related to the cross-border nature of the underlying problems, as explained in the previous sections. A national solution would not be relevant since the quality of service depends on the connectivity/service provided by the visited network. EU action not only has relevant added value and is desirable, but is also necessary to address these issues.</p> <p>Measures on access to emergency services: the value added of EU action is strictly related to the cross-border nature of the underlying problems, as explained in the previous sections. A national solution alone would not be viable or effective. EU action not only has relevant added value and is desirable, but is also necessary to address these issues.</p>
(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the single market be improved?
As underlined in the Commission’s review report of 29 November 2019, the overall success of the RLAH reform is shown by the rapid and massive increase in roaming

consumption, a high level of consumer satisfaction, a largely unchanged overall domestic tariff structure, MVNOs maintaining their position on the market and a continuous decline in average roaming prices in the rest of the world. This indicates that there are no waterbed effects linked to the introduction of RLAH in EU countries. The effectiveness of the measures to ensure sustainable RLAH is confirmed by the findings of the roaming review that RLAH has not affected domestic price structures, as reported both in the BEREC opinion on the roaming market and in the Commission study ‘Mobile Broadband Prices in Europe’, which indicates that there was no trend of increasing domestic prices between 2018 and 2019. At wholesale level, the regulation has triggered considerable reductions in wholesale prices that have benefited net outbender operators and increased roaming demand, which has benefited net inbounder operators and the recovery of costs in providing wholesale roaming.

If Regulation (EU) No 531/2012 already contributed to the functioning of the single market, there is a clear need to maintain EU rules on roaming by introducing the necessary amendments to make sure that the advantages that have already materialised can be kept, that the results already obtained do not go lost and that the residual obstacles to a full RLAH experience described above can be lifted.

(c) What are the benefits in replacing different national policies and rules with a more uniform policy approach?

For the reasons explained above, national policies and rules alone are unable to tackle the issue of high roaming charges. Regulation (EU) No 531/2012 provides direct applicability and ensures greater harmonisation on this cross-border aspect of the functioning of mobile telecoms markets. Given the tangible benefits that individuals and businesses currently enjoy as a result of the RLAH rules (as demonstrated in the roaming report and the interim review), it is necessary to ensure that end-users, both consumers and businesses, will continue benefitting from RLAH after June 2022.

With regard to these measures, a uniform approach is once again justified by the cross-border nature of the underlying problems.

(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local level)?

One of the policy options considered in assessing the impact of the previous reviews of Regulation (EU) No 531/2012 was to set country-specific wholesale roaming caps instead of EU-wide caps. Many stakeholders felt that this option fragmented the wholesale roaming market. They found country-specific regulation to be contrary to the objective of a digital single market, and as such to represent a step backwards. It was found to be more complex and less transparent than EU-wide caps.

In addition, such an option was also found to lead to some fragmentation of the retail roaming market. Operators considered that country-specific wholesale roaming caps would lead to differentiation of retail roaming offers as the latter would depend on the country visited by the roaming customer; this would produce a very complex, fragmented

and unfavourable outcome for the consumer.

The impossibility or impracticability of country-specific solutions substantially leads to a lack of specific competences at national and local level in the roaming sector. Problems with loss of competences for Member States therefore do not arise.

(e) Will there be greater legal clarity for those having to implement the legislation?

No significant changes are expected in the monitoring and implementation of the Roaming Regulation. However, the measures on quality of service may bring some legal clarity in terms of implementation and monitoring obligations.

### **3. Proportionality: How should the EU act?**

#### **3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain adequate justification on the proportionality of the proposal and a statement that allows appraisal of how the proposal complies with the principle of proportionality?**

The objective of the proposal is to bring 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 national prices when making calls and receiving calls, sending and receiving text messages and when using packet switched data communication services. This would help ensure that the single market functions smoothly while achieving a high level of consumer protection, boosting competition and transparency in the market and offering incentives for both innovation and consumer choice. In addition, the proposal brings additional measures that aim to remove persisting obstacles to an authentic RLAH 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 EU Treaty. In accordance with the principle of proportionality, as 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 because it is provided for a limited time period, as it has an expiry date (June 2032, i.e. a duration of 10 years). The regulation would be proposed for 10 years given that a decade is a typical duration needed to roll out a new generation of mobile communications and develop new business models. The chosen duration was established in a forward-looking manner given that market competition is not expected to change significantly in the next 10 years. This is also based on the fact that the rollout of 5G 'software-defined networks', which allows slices and could have a profound impact on business models, requires core network elements to be replaced and is expected to take more time than the first 5G rollouts. Furthermore, the assessment of the possible impact of technological changes on roaming services carried out in the impact assessment was made based on a medium-term timeline

of 5-10 years. Finally, this 10-year duration aims to provide certainty in the market and minimise the regulatory burden.

In a landmark decision on roaming (C-58/08), the European Court of Justice recognised that, given the importance of the objective of consumer protection under Article 95(3) TEC (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 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, text messaging and data roaming services should be maintained to protect consumers until competition at retail or wholesale level is fully developed. The proposed measure would also include a flexible approach to revising the wholesale caps, which can 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.

This underlines the EU legislator’s efforts to create the conditions for competition to develop on the intra-EU roaming market so that competitive pressure will be sufficient to guarantee low retail prices with less constraining regulation or even without regulation.

**3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?**

A regulation is the only legislative instrument capable of effectively tackling the issues mentioned above simultaneously in the EU, imposing obligations on all operators and fostering legal certainty.

Regulatory intervention in the form of a recast of Regulation (EU) No 531/2012 is therefore necessary and seems most appropriate to ensure that roaming rules are maintained at EU level and that the a single telecoms market across the EU functions properly.

In addition to the above considerations, considering that Regulation (EC) No 531/2012 has been substantially amended several times, now that new amendments should be made to the Regulation, the new proposal should take the form of a recast in the interests of clarity and rationality.

(a) Is the initiative limited to aspects that Member States cannot achieve satisfactorily on their own, and where the EU can do better?

The proposed measures are limited to aspects that have not be insufficiently addressed at national level and for which a harmonised approach is necessary.

In particular:

- RLAH can only be maintained with **wholesale rates** that enable the sustainable provision of retail roaming services. With the proposed two-step glide path reduction of



wholesale rates, sustainability would improve significantly.

- On **quality of service**, the proposal aims to ensure that roaming customers enjoy a similar level of quality of service while roaming like at home (which is currently not always the case). Access to roaming services, and therefore the quality of service provided, depends on the connectivity/service provided by the visited network. Member States' authorities do not have the competence to monitor the compliance of a network in a different Member State. The proposal also aims to ensure that the wholesale access obligation can facilitate innovation and technology developments.

- **Access to emergency services** while roaming is not ensured for all end-users in the same way in the EU as at home. The current situation indicates that Member States' authorities do not have the competence, capacity and jurisdiction to ensure free access through alternative means to emergency services and free-of-charge caller location in a cross-border setting.

(b) Is the form of EU action (choice of instrument) justified, as simple as possible and coherent with the satisfactory achievement of and compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?

This objective is unlikely to be achieved by less restrictive means than the legislative instrument proposed. It ensures simultaneous application in the entire EU, imposing the same obligations on all operators, impacting cross-border negotiations at business level (wholesale roaming agreements between operators) and tackling the cross-border aspects of retail offers for consumers (quality of service, transparency).

(c) Does EU action leave as much scope for national decisions as possible, while achieving the objectives set? (e.g. is it possible to limit EU action to minimum standards or use a less stringent policy instrument or approach?)

Yes, the proposal is limited to imposing rules necessary to achieve the objectives, but which aim at being the least intrusive instrument to achieve the desired result and being proportional to the interests to be protected.

(d) Does the initiative create financial or administrative costs for the EU, national governments, regional or local authorities, economic operators or individuals? Are these costs commensurate with the objective to be achieved?

Annex 3 to the impact assessment accompanying the proposal presents the costs and benefits of the initiative in detail.

For operators, the regulation seeks to strike a balance between ensuring cost recovery for those that provide wholesale inbound roaming services and minimising sustainability challenges for outboulder operators and MVNOs. Compliance costs are minor in general, with the exception of measures to ensure access to emergency communications



while roaming. However, these are justified by the importance of the relevant objective. The increase in administrative costs is small and is in any case balanced by the savings achieved thanks to the REFIT measures. Those costs are considered commensurate with the objective of ensuring RLAH in the digital single market.

NRAs incur costs related to monitoring and supervision. However, given that EU rules on roaming are already in place, many of the costs to implement these requirements have been already incurred. BEREC will incur implementation costs as it is tasked with implementing and maintaining a European database with number ranges of value added services. However, this is fully supported by stakeholders in the public consultation, and especially operators, who consider this an important tool.

(e) While respecting EU law, have special circumstances that apply in individual Member States been taken into account?

Not applicable.