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Subject: Proposal for a Regulation of the European Parliament and of the Council
on roaming on public mobile communications networks within the Union
(recast)
- Mandate for negotiations with the European Parliament

Delegations will find in the Annex the Mandate on the above mentioned Proposal for a Regulation adopted by the Permanent Representative Committee on 16 June 2021.

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)

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 Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EU) No 531/2012 of the European Parliament and of the Council³ has been substantially amended several times⁴. Since further amendments are to be made, that Regulation should be recast in the interests of clarity.

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ 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).

⁴ See Annex II.

- (2) In particular, in 2015 the European Parliament and the Council adopted Regulation (EU) 2015/2120⁵, which amended Regulation (EU) No 531/2012 and required retail 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 Council⁶ 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 outboulder operators⁷. 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.

⁵ Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users’ rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (OJ L 310, 26.11.2015, p. 1).

⁶ 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).

⁷ An outboulder 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.

- (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, **use of non-terrestrial networks in roaming on vessels and aircraft**, 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.
- (5) The national regulatory authorities **or other competent 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.
- (5a) **The global Covid-19 pandemic has changed the end-user's consumption patterns. On one side, changed conditions and possibilities for travelling have significantly impacted roaming traffic. On the other side, the lockdown has increased the digitalization of the European population with an increasing number of users getting used to digital services, likely to impact future consumption patterns both domestically and while travelling. As roaming traffic by default is impacted by changes in travel behaviour and consumption patterns, the impact of the pandemic on roaming usage as well as on overall sustainability has been considered in the impact assessment sensitivity analysis. BEREC will continue its monitoring of roaming market including traffic, which is vital for the analysis required in review reports foreseen by this Regulation.**
- (5b) **This Regulation should satisfy the objective to preserve incentives to invest, ensuring that the functioning of wholesale roaming markets allows, on the one hand to protect operators with little bargaining power and, on the other hand, operators to recover all costs of providing regulated wholesale roaming services. It should also satisfy the objective to enable the widespread sustainable provision of RLAH, also in view of operators with traffic imbalances. The Regulation takes into due consideration the investments made by operators to deliver mobile roaming services. The wholesale caps sustainability and cost assessment developed specifically for the present Regulation takes into account, as appropriate, spectrum costs, equipment cost and infrastructure investments. The framework is based on the infrastructure and technology which is expected to dominate consumption for the time period in which the caps are applied. In light of future developments, a full analysis and review of emerging technologies and utilisation of new infrastructure generations is reserved for the next review, as for instance 5G today is still in a developing phase. The 2025 review will, if data allows for it, include new generation infrastructures and its impact on traffic volumes, in particular data services traffic, as its key pillars.**

- (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.
- (7) An internal telecommunications market cannot be said to exist while there are differences between domestic and roaming prices. Therefore the difference between domestic charges and roaming charges should be eliminated, thus establishing an internal market for mobile communication services.
- (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.
- (9) The widespread use of internet-enabled mobile devices means that data roaming is of great economic significance. This is 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.

- (10) Directive 2002/19/EC of the European Parliament and of the Council⁸, Directive 2002/20/EC of the European Parliament and of the Council⁹, Directive 2002/21/EC of the European Parliament and of the Council¹⁰, Directive 2002/22/EC of the European Parliament and of the Council¹¹ and Directive 2002/58/EC of the European Parliament and of the Council¹² aimed to create an internal market for electronic communications within the Union while ensuring a high level of consumer protection through enhanced competition. **With the exception of Directive 2002/58/EC, those directives** were repealed by Directive (EU) 2018/1972 of the European Parliament and of the Council¹³. 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.
- (11) The retail and wholesale roaming markets exhibit unique characteristics which justify exceptional measures which go beyond the mechanisms otherwise available under Directive (EU) 2018/1972.
- (12) This Regulation should allow for a departure from the rules otherwise applicable under the Directive (EU) 2018/1972 namely that prices for service offerings should be determined by commercial agreement in the absence of significant market power, thereby accommodating the introduction of complementary regulatory obligations which reflect the specific characteristics of Union-wide roaming services.

⁸ 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).

⁹ 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).

¹⁰ 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).

¹¹ 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).

¹² 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).

¹³ 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).

- (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 values should be determined in the relevant currency by applying the average of several reference exchange rates over time 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. 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.
- (14) In order to allow for the development of a more efficient, integrated and competitive market for roaming services, there should be no restrictions preventing 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. 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. **However, this Regulation should not limit the possibility to conclude wholesale access with only those operators that have the most advanced networks. Operators should have the possibility to negotiate their wholesale roaming agreements according to their commercial needs and their end-users' best interests. Therefore, in the transition towards next generation mobile communication networks and technologies roaming providers should gradually ensure wholesale roaming access that enables the provision of retail roaming services under the same conditions as at home.** 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. Directive (EU) 2018/1972 does not provide for a solution to this problem via the imposition of obligations on operators with significant market powers.

- (15) Therefore an 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. **The parameters under which mobile services are offered by the visited network operator to its own domestic customers, are understood to be technically feasible. Within the boundaries of the roaming agreement and without prejudice to the retail obligations in Article 5(2), the visited mobile network operator should ensure that roaming customers have no less favourable conditions than what the visited mobile network operator offers to its domestic customers, for example in terms of the quality of service, such as available speed.** 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.
- (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.

- (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.
- (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.
- (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, **also when traveling**, and is equivalent to that enjoyed by other end-users. **These means of access could be real time text or total conversation as provided in the [Articles 2 and 4 of] Directive (EU) 2019/882 (European Accessibility Act) or other non-voice communications services, for example SMS, messaging or video through emergency applications, and relay services, that Member States deploy taking into account the requirements laid down in Union legislation and the capabilities and technical equipment of the national PSAP system. The implementation of the means of access to emergency services available for roaming end-users with disabilities and the delivery of the caller location information should be based to the greatest extent possible on European standards or specifications that should be promoted by the Commission and Member States in cooperation with European standardization bodies and other relevant institutions.** 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 **include information in the reference offer** ~~inform the roaming provider through the wholesale roaming agreement~~ about what type of emergency communications are mandated **and technically feasible to ensure access for roaming customers** 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.

- (20) Certain conditions 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. 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 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 8 of this Regulation, 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.

- (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 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. **As long as it is not permanent roaming**, 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, **including the provisions on fair usage of roaming services and the possibility for the mobile network operator to include in their reference offer conditions to prevent permanent roaming of regulated roaming services or anomalous or abusive use of wholesale roaming access**. 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 have the option of agreeing not to apply maximum regulated wholesale roaming charges for the duration of wholesale roaming agreements. 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. This should be without prejudice to obligations as regards the provision of regulated retail roaming services. 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.
- (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.

- (23) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission in respect of setting out 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, 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 Council¹⁴.
- (24) Until the adoption of those implementing measures, Commission Implementing Regulation (EU) 2016/2286¹⁵ should continue to apply.
- (25) 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 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 those services could risk disrupting the orderly functioning of the internal market for roaming services and would not allow a higher degree of competition.
- (26) The abolition of retail roaming surcharges in accordance with Regulation (EU) 2015/2120 was necessary to establish and ease the functioning of a digital single market across the Union. However, that Regulation alone was not sufficient to ensure the proper functioning of the roaming market. This Regulation should contribute to pricing models in domestic markets not being affected by the abolition of retail roaming surcharges.
- (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.

¹⁴ 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).

¹⁵ 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).

- (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 **and mobile network operators** should take the necessary measures to ensure that **roaming providers are able to provide** 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.~~ **For example, if the maximum available data speed of the visited network is equal to, or higher than the maximum available speed offered domestically by the roaming provider, the roaming provider should not offer a lower speed than the maximum available speed provided domestically. If the maximum available speed of the visited network is lower than the maximum available speed offered domestically by the roaming provider, the roaming provider should not offer a lower speed than that maximum available speed of the visited network. A roaming provider should not be obliged to offer a higher data speed than what the roaming customer subscribes to at home.**

Regarding the mobile access technologies which should be made available under the same conditions, the roaming provider should not restrict the roaming service to an older network generation or technology than what is offered domestically, when a newer generation or technology is available on the visited network. Roaming providers are not obliged to offer a newer network generation or technology than the roaming customer experiences at home.

Furthermore, in particular during the transition towards next generation mobile communication networks and technologies, when roaming provider and visited network have not yet reached a comparable implementation, the roaming provider may offer the regulated retail roaming service with the existing mobile communication technology.

- (29) 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.

- (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. 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.
- (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.
- (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.

- (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. 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 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.
- (34) 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 to withdraw from their contracts.
- (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. **A roaming provider does not exercise control over the visited mobile network and may have limited control over the roaming service provided to its roaming users. In order to empower roaming customers a roaming provider should inform their customers in a clear manner how the conditions and quality of roaming services can in practice differ from the services consumed domestically.** The provider should **to the extent possible** make available information on relevant factors that can affect the quality of service, such as **speed, latency, availability of roaming services or other services when roaming due to such as availability of** certain technologies, coverage or variation due to external factors such as topography. **For example, a clear and comprehensible explanation may be given on possible significant deviations from the estimated maximum speed and how this can impact the service to which the customer subscribes. Such information may also include a clear and comprehensible explanation as to how any volume limitation, speed and other quality of service parameters may in practice have an impact on the data roaming service, and in particular on the use of content, applications and services.**

- (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, **without prejudice to Article 97 of Directive (EU) 2018/1972**. 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. **The mechanism for deactivating third-party billing in Annex VI of Directive 2018/1972, if available, may be applied to roaming situations.**
- (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.
- (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.
- (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.

(39a) ~~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.~~ **Without prejudice to the revision process by the Commission, the maximum wholesale charges for roaming ~~price~~ services should remain at EUR 0,019 per minute, EUR 0,003 per SMS message and EUR 1,50 per gigabyte of data transmitted until 30 June 2032. The Commission should carry out an assessment and present a report by 30 June 2025 and an additional report by 30 June 2029, with a view to revise the maximum wholesale charges where necessary.**

(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 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.

~~(41)~~

(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.

- (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 **access, free of charge**, a web page giving detailed information about the types of services (calls and SMS) that may be subject to increased costs. **The text message should also inform, in the message or by way of a link with access free of charge, about additional charges for roaming on non-terrestrial networks on board vessels and aircraft.** 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.
- (44) This Regulation should in relation to regulated retail roaming services lay down specific transparency requirements aligned with the specific tariff and volume conditions applicable following the abolition of the retail roaming surcharges. 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.
- (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 **or other competent 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.
- (46) Moreover, measures should be laid down to ensure the transparency of retail charges for all data roaming services, **including use of non-terrestrial networks in roaming, such as on vessels and aircraft**, 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 Wi-Fi.

- (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 **all** 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 that limit is being approached. Upon reaching 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 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.
- (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.
- (49) Customers under pre-paid tariffs may also suffer from bill shocks for the use of data roaming services. For that reason the provisions on the cut-off limit should also apply to those customers.
- (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 should facilitate competition and improve the functioning of the internal market. **Furthermore, bilateral agreements between operators from the Union and outside the Union should be encouraged on a reciprocal basis, in order to reduce wholesale roaming charges.**

- (50a) **Roaming tariffs incurred by roaming customers when they connect, actively or inadvertently, to non-terrestrial networks are significantly higher than tariffs for regulated roaming services. Due to the absence of a consistent approach to transparency and safeguard measures for roaming on non-terrestrial networks consumers are at greater risk of bill-shock. Therefore, additional safeguard and transparency measures should be introduced to apply also on roaming on non-terrestrial networks on board vessel and aircraft. Furthermore, Member States should promote mobile applications supporting consumers' notifications when connecting inadvertently to a non-terrestrial network, where applicable. Such applications upon installation on consumers' devices should enable roaming costumers to block the use of inadvertent roaming services or to continue to use them.**
- (51) If the visited network operator in the visited third country 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.
- (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 **that are technically feasible to be used by roaming customers**. 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 Council¹⁶. **The information on the means of access should be provided by an SMS that informs on the possibility to access emergency services free of charge by calling the single European emergency number '112' and provides a link to a dedicated website, with access free of charge, describing the alternative means of access to emergency services in the visited Member State, indicating only those that are technically feasible to be used by roaming customers. The website should contain information in the language in which the roaming provider is communicating with the roaming customer.**

¹⁶ 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).

- (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) **or other competent authorities** 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. **With a view to providing better consumer protection and transparency, this database may contain additional information, for example on the tariffs associated with value added service number ranges (such as per minute or per act tariffs). This tariff information could then be made available on the dedicated web page providing information about value added services.** BEREC should establish the procedures by which the competent authorities are to provide and update the information requested under Article 17.
- (53a) **A single Union-wide database maintained by BEREC would help national operators, national regulatory authorities and other competent authorities to be informed of all the means of access to emergency services deployed in the Union that are technically feasible to be used by roaming end-users. The database would enable exchange of best practice and enable the uptake of effective technological solutions for accessing emergency services by roaming customers.**

- (54) **Member States may assign certain tasks related to the protection of end-user rights in the electronic communications sector to competent authorities other than national regulatory authorities. Where Member States assign to competent authorities other than national regulatory authorities regulatory tasks related to contracts, for instance regarding information requirements for contracts, transparency, or contract termination, this competence covers all parts of the contract, including the roaming related rights and obligations. Without prejudice to the assignment of tasks under Directive (EU) 2018/1972, the national regulatory authorities or where applicable, other competent authorities** which are responsible for carrying out tasks under 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 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.
- (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 that end, the national authorities may take additional measures consistent with Union law.
- (56) While ensuring business confidentiality and in order to monitor and supervise the application of this Regulation 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.

- (57) Where Union providers of mobile 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 **or other competent authorities** should make use, where necessary, of the powers under Article 61 of Directive (EU) 2018/1972 to ensure adequate access and interconnection, taking into account the objectives set out in Article 3 of that Directive, in particular the development of the internal market by favouring the provision, availability and interoperability of pan-European services, and end-to-end connectivity.
- (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 additional measures taken in accordance with 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 Directive (EU) 2018/1972.
- (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. The Commission should submit two reports to the European Parliament and to the Council. In its ~~biennial~~ reports, the Commission should, in particular, assess whether RLAH has any impact on the evolution of tariff plans available on the retail markets. 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 reports should, in particular, analyse the extent to which exceptional retail roaming surcharges have been authorised by national regulatory authorities **or other competent 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; **information on wholesale pricing for data services**; 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.

- (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 **or other competent 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.
- (61) The Commission, BEREC and the national regulatory authorities **or other competent authorities** concerned should fully ensure business confidentiality when sharing information for the purposes of reviewing, monitoring and supervising the application of this Regulation. 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.
- (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-Making¹⁷. 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.

¹⁷ OJ L 123, 12.5.2016, p. 1.

- (63) Since the objectives of this Regulation, namely to 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 but can 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.
- (64) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (65) The European Data Protection Supervisor was consulted in accordance with Article 42 of Regulation (EU) 2018/1725¹⁸ of the European Parliament and of the Council, **and delivered an opinion on 20 April 2021.**

¹⁸ 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).

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1. This Regulation provides 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, 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.

It sets out the conditions for wholesale access to public mobile communications networks for the purpose of providing regulated roaming services. It applies both to charges levied by network operators at wholesale level and to charges levied by roaming providers at retail level.

2. This Regulation also lays down rules aimed at increasing transparency and improving the provision of information on charges to users of roaming services, **including users of roaming services outside of the European Union and users of non-terrestrial networks on roaming on board vessels and aircraft, where applicable.**

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

4. Where maximum charges under Articles 9 to 12 are denominated in currencies other than the euro, the values shall be determined in those currencies by applying the average of the reference exchange rates so 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*. For the maximum charges the limits in currencies other than the euro shall be revised annually as from 2023. The annually revised limits in those currencies shall apply from 15 May.

5. **This Regulation is without prejudice to the assignment of tasks to national regulatory authorities and other competent authorities under Directive (EU) 2018/1972, including with reference to the responsibilities to implement Title III of Part III thereof.**

Article 2

Definitions

1. For the purposes of this Regulation, the definitions set out in Article 2 of 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) ‘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;
 - (d) ‘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;
 - (e) ‘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;
 - (f) ‘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;
 - (g) ‘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;
 - (h) ‘SMS message’ means a Short Message Service text message, composed principally of alphabetical or numerical characters, or both, capable of being sent between mobile and/or fixed numbers assigned in accordance with national numbering plans;

(i) ‘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;

(j) ‘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, excluding the transmission or receipt of regulated roaming calls or SMS messages, but including the transmission and receipt of MMS messages;

(k) ‘wholesale roaming access’ means direct wholesale roaming access or wholesale roaming resale access;

(l) ‘direct wholesale roaming access’ means the making available of facilities 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;

(m) ‘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;

(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.

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. **Within the boundaries of the roaming agreement and without prejudice to Article 5(2) the mobile network operator shall not offer inferior conditions to the roaming customers compared to the conditions offered to its domestic customers.**

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.

4. Rules on regulated wholesale roaming charges laid down in Articles 10, 11 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 8.

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 18(7) 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.

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. 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, update the guidelines for wholesale roaming access laid down in accordance with Article 3(8) of Regulation (EU) No 531/2012.

Article 4

Committee procedure

1. The Commission shall be assisted by the Communications Committee established by Article 118(1) of 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.

Article 5

Provision of regulated retail roaming services

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, nor any general charge to enable the terminal equipment or service to be used abroad, subject to Articles 6 and 7.
- ~~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.~~
- 2. The roaming provider shall not offer regulated roaming services under inferior conditions than offered domestically, if the same generation of mobile communication networks and technologies are available on the visited network.**

Article 6

Fair use

1. Roaming providers may apply in accordance with this Article and the implementing acts referred to in Article 8 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 9 shall apply to regulated retail roaming services exceeding any limits under any fair use policy.

Article 7

Sustainability mechanism

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 5 and 6, 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 8. 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

Implementation of fair use policy and of sustainability mechanism

1. In order to ensure consistent application of Articles 6 and 7, the Commission shall, after having consulted BEREC, adopt 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 retail roaming services at domestic prices 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 4(2).

2. 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. 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 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 national regulatory authority **or other competent authorities** shall strictly monitor and supervise the application of the fair use policy and **national regulatory authority shall strictly monitor and supervise the application of** the measures on the sustainability of the provision of retail roaming services at domestic prices, 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 7(3), the national regulatory authority **or other competent authorities** shall in a timely manner enforce the requirements of Articles 6 and 7 and the implementing acts provided for in paragraph 2 of this Article. The national regulatory authority **or other competent authorities** may at any time require the roaming provider to amend or discontinue the surcharge if it does not comply with Article 6 or 7. The national regulatory authority **or other competent authorities** shall inform the Commission annually concerning the application of Articles 6 and 7, and of this Article.

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.

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 10(2), 11(1) and 12(1), respectively;

(b) 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.

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.

2. Roaming providers may offer, and roaming customers may deliberately choose, a roaming tariff other than one set in accordance with Articles 5, 6, 7 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 and 6, 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, 6, 7 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, 6, 7 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.

3. 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 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;

(c) the **conditions and** quality of **the roaming** 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, **without prejudice to Article 97 of Directive (EU) 2018/1972**.

5. Roaming providers shall publish the information referred to in paragraphs 3 and 4.

Article 10

Wholesale charges for the making of regulated roaming calls

1. The average wholesale charge that the visited network operator may levy on the roaming provider for the provision of a regulated roaming call originating on that visited network, inclusive, among others, of origination, transit and termination costs, shall not exceed a safeguard limit of EUR ~~0,022~~ **0,027** per minute. That maximum wholesale charge shall 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 2032.
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

Wholesale charges for regulated roaming SMS messages

1. 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 ~~0,004~~ **0,007** 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 21, 22 and 23, remain at EUR 0,003 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 2032.

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 12

Wholesale charges for regulated data roaming services

1. 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 ~~2,002,25~~ per gigabyte of data transmitted. **That maximum wholesale charge shall decrease to EUR 1,80 per gigabyte of data transmitted on 1 January 2024 and to EUR 1,50 per gigabyte of data transmitted on 1 January 2025.** ~~That maximum wholesale charge shall decrease to EUR 1,502,00 per gigabyte of data transmitted on 1 January 2025 and shall, without prejudice to Articles 21, 22 and 23 remain at EUR 1,50 per gigabyte of data transmitted 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 2032.

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.

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.

Article 14

Transparency of retail 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 customers have notified the roaming provider that they do not require this service, provide the customers, automatically by means of a Message Service, without undue delay and free of charge, when they enter a Member State other than that of 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.

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 7.

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 **without prejudice to Article 97 of Directive (EU) 2018/1972**, including a link to **access free of charge** 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 **or other additional information contained in the database for numbers of value added service, in accordance with Article 17(2)**.

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.

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 disabilities** with the basic personalised pricing information referred to in the first subparagraph automatically, by voice call, free of charge, if they so request.

The first, second, fifth and sixth subparagraphs, with the exception of the reference to the fair use policy and the surcharge applied in accordance with Article 7, shall also apply to voice and SMS roaming services used by roaming customers travelling outside the Union **and to voice and SMS roaming services on non-terrestrial networks on board aircraft and vessels** and provided by a roaming provider.

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.

3. 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 7 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.

4. 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.

5. 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.

6. Roaming providers shall take reasonable steps to protect their customers from paying roaming charges for calls and SMS messages for inadvertently accessed non-terrestrial networks on board aircraft and vessels. In particular, each customer shall have the right at any time easily and free of charge to opt-out from the use of such networks and shall have the right, at any time, easily and free of charge to require the roaming provider to enable access to such networks again.

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 4.

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.

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.

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.

3. 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 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.

4. 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.

To 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. **An additional notification shall be sent to the roaming customer's mobile device to whom the default limits referred to in the second and third subparagraphs are applicable on the basis of not having opted for another limit, in case a EUR 100 data consumption limit is exceeded.** These notifications 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 **or reinstate** 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.

5. Paragraphs 2 and 4 shall not apply to machine-to-machine devices that use mobile data communication.

6. 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.

6a. Roaming providers shall take reasonable steps to protect their customers from paying roaming charges for data services for inadvertently accessed non-terrestrial networks on board aircraft and vessels. In particular, each customer shall have the right at any time easily and free of charge to opt-out from the use of such networks. and shall have the right, at any time, easily and free of charge to require the roaming provider to enable access to such networks again.

7. This Article, with the exception of paragraph 6 the second subparagraph of paragraph 2 and paragraph 3, 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 **and to data roaming services on non-terrestrial networks on board aircraft and vessels.**

~~Where the customer opts for~~ The facility referred to in the first subparagraph of paragraph 3, the requirements provided in paragraph 4 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.

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~~ **This message shall also provide the roaming customer with a link to a dedicated website providing information on** 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 **or by any appropriate means adapted to facilitate its receipt and easy comprehension** every time the roaming customer enters a Member State other than that of his domestic provider. ~~This information 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 and means of access to emergency services

1. BEREC shall establish and maintain:

(a) ~~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 **or other competent authorities** and operators. The database shall be **established at the latest** by 31 December 2023. To that end, the **national regulatory authorities** ~~NRA~~ or other competent authorities shall, by electronic means, provide the necessary information and the relevant updates to BEREC without undue delay.

(b) **a single Union-wide database of means of access to emergency services that are mandated in each Member State and are technically feasible to be used by roaming end-users. The database shall be established at the latest by 1 August 2022. To that end, the national regulatory authorities or other competent authorities shall, by electronic means, provide the necessary information and the relevant updates to BEREC without undue delay. The database shall be made accessible to operators and national regulatory authorities or other competent authorities.**

2. **Without prejudice to Article 14, these databases shall enable NRAs and other competent authorities, on an optional basis to provide additional information to customers.**

Article 18

Supervision and enforcement

1. National regulatory authorities **and where applicable, other competent authorities**, shall monitor and supervise compliance with this Regulation within their territory.

In particular, National regulatory authorities shall strictly monitor and supervise roaming providers availing themselves of Article ~~6, 7 and 9(3)~~.

National regulatory authorities or other competent authorities shall monitor and supervise compliance of Articles 5, 6, 9, 14, 15, 16 and 19(2).

2. National regulatory authorities **or other competent authorities** and, where relevant, BEREC shall make up-to-date information on the application of this Regulation, in particular Articles 5, 6, 7, 9, 10, 11, and 12, publicly available in a manner that enables interested parties to have easy access to it.

3. National regulatory authorities **or other competent authorities** shall, in preparation for the review provided for in Article 21, 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. National regulatory **or other competent** 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 **or other competent** authorities shall monitor and collect information on inadvertent roaming and take appropriate measures.

4. National regulatory authorities **or other competent 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 **or other competent** authority.
5. Where a national regulatory authority **or other competent authorities** considers information to be confidential in accordance with Union and national rules on business confidentiality, the Commission, BEREC and any other national **or competent** regulatory authorities concerned shall ensure such confidentiality. Business confidentiality shall not prevent the timely sharing of information between the national regulatory **or competent** authorities, the Commission, BEREC and any other national regulatory **or competent** authorities concerned for the purposes of reviewing, monitoring and supervising the application of this Regulation.
6. National regulatory authorities **or other competent 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 61 of 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.
7. Where a national regulatory authority **or other competent authorities** 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

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 and 27 of Directive (EU) 2018/1972 shall apply.

Disputes between visited network operators and other operators on rates applied to inputs necessary for the provision of regulated wholesale roaming services may be referred to the competent national regulatory authority or authorities pursuant to Articles 26 and 27 of the Directive (EU) 2018/1972. In ~~such a~~ **the case of cross-border disputes**, the competent national regulatory authority or authorities shall notify the dispute to BEREC in order to bring about a consistent resolution of 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.

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 of Directive (EU) 2018/1972 are available.

Article 20

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 the Commission of those rules and measures and of any subsequent amendment affecting them.

Article 21

Review

1. The Commission shall, after consulting BEREC, submit two reports to the European Parliament and to the Council. ~~Where necessary, a~~ After submitting each report **and taking utmost account of it**, the Commission ~~shall be~~ **is empowered to** 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 30 June 2025 and the second by 30 June 2029.

The reports shall include, ~~inter alia~~ **at least**, an assessment of:

(ab) the impact of the roll-out and implementation of next generation mobile communication networks and technologies on the roaming market;

(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;

- (c) the evolution of the machine-to-machine roaming;
- (d) the extent to which the implementation of the measures provided for in Article 3, 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;
- (e) the evolution of the retail tariff plans available;
- (f) changes in data consumption patterns for both domestic and roaming services, **including changes in travel patterns of European end users caused by circumstances such as pandemics as for example Covid-19 or natural disasters**;
- (g) 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 7;
- (h) the ability of visited network operators to recover the efficiently incurred costs of providing regulated wholesale roaming services **taking into account the latest information on network deployment, as well as developments in technical capabilities, pricing models and constraints of the networks, for instance the possibility to include cost model calculation based on capacity rather than consumption**;
- (i) the impact of the application of fair use policies by operators in accordance with Article 8, including the identification of any inconsistencies in the application and implementation of such fair use policies;
- (j) the extent to which roaming customers and operators face problems in relation to value added services **and the implementation of the database for numbers of value added service**;
- (k) the application of the measures of this Regulation **and complaints related to the use of** ~~an~~ emergency communications **while roaming**.

2. In order to assess competitive developments in the Union-wide roaming markets, BEREC shall collect data regularly from national regulatory authorities **or other competent 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, **in particular taking into account cellular connectivity solutions based on unlicensed spectrum** 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 **or competent** 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, **including on non-terrestrial roaming on aircraft and vessels** 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 10, 11 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 once 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.

Revision of the maximum wholesale charges

When the Commission shall, ~~taking utmost account of the opinion of BEREC,~~ adopts 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 **the Commission shall do so in accordance with Article 23 and by taking utmost account of the opinion of BEREC.**

~~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;
- (d) take into account the wholesale market and wholesale pricing for data service on 5G.**

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.

Article 24

Notification requirements

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

Article 25

Repeal

Regulation (EU) No 531/2012 is repealed.

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

Entry into force and expiry

This Regulation shall enter into force on 1 July 2022.

It shall expire on 30 June 2032.

Providers' obligations in Articles 14 and 16 related to the information in the databases under Art. 17, shall apply at the latest by 1 January 2023 as regards means of access to emergency services and from the date of establishment of the database for numbers of value added services, but not later than 31 December 2023 for information on value added services number ranges.

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*