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► **B** ► **M1** **REGULATION (EC) No 717/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

of 27 June 2007

on roaming on public mobile communications networks within the Community ◀

(Text with EEA relevance)

(OJ L 171, 29.6.2007, p. 32)

Amended by:

		Official Journal		
		No	page	date
► M1	Regulation (EC) No 544/2009 of the European Parliament and of the Council of 18 June 2009	L 167	12	29.6.2009

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**REGULATION (EC) No 717/2007 OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL**

of 27 June 2007

**on roaming on public mobile communications networks within the
Community**

(Text with EEA relevance)

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having consulted the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) The high level of the prices payable by users of public mobile telephone networks, such as students, business travellers and tourists, when using their mobile telephones when travelling abroad within the Community is a matter of concern for national regulatory authorities, as well as for consumers and the Community institutions. The excessive retail charges are resulting from high wholesale charges levied by the foreign host network operator and also, in many cases, from high retail mark-ups charged by the customer's own network operator. Reductions in wholesale charges are often not passed on to the retail customer. Although some operators have recently introduced tariff schemes that offer customers more favourable conditions and lower prices, there is still evidence that the relationship between costs and prices is not such as would prevail in fully competitive markets.
- (2) The creation of a European social, educational and cultural area based on the mobility of individuals should facilitate communication between people in order to build a real 'Europe for Citizens'.
- (3) 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) ⁽³⁾, Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) ⁽⁴⁾, 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) ⁽⁵⁾, Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) ⁽⁶⁾ and Directive 2002/58/EC of the

⁽¹⁾ OJ C 324, 30.12.2006, p. 42.

⁽²⁾ Opinion of the European Parliament of 23 May 2007 (not yet published in the Official Journal) and Council Decision of 25 June 2007.

⁽³⁾ OJ L 108, 24.4.2002, p. 7.

⁽⁴⁾ OJ L 108, 24.4.2002, p. 21.

⁽⁵⁾ OJ L 108, 24.4.2002, p. 33.

⁽⁶⁾ OJ L 108, 24.4.2002, p. 51.

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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)⁽¹⁾ (hereinafter together referred to as ‘the 2002 regulatory framework for electronic communications’) aim to create an internal market for electronic communications within the Community while ensuring a high level of consumer protection through enhanced competition.

- (4) This Regulation is not an isolated measure, but complements and supports, insofar as Community-wide roaming is concerned, the rules provided for by the 2002 regulatory framework for electronic communications. That framework has not provided national regulatory authorities with sufficient tools to take effective and decisive action with regard to the pricing of roaming services within the Community and thus fails to ensure the smooth functioning of the internal market for roaming services. This Regulation is an appropriate means of correcting this situation.
- (5) The 2002 regulatory framework for electronic communications draws on the principle that ex ante regulatory obligations should only be imposed where there is not effective competition, providing for a process of periodic market analysis and review of obligations by national regulatory authorities, leading to the imposition of ex ante obligations on operators designated as having significant market power. The elements constituting this process include the definition of relevant markets in accordance with the Commission's Recommendation⁽²⁾ on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC (hereinafter referred to as ‘the Recommendation’), the analysis of the defined markets in accordance with the Commission's guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services⁽³⁾, the designation of operators with significant market power and the imposition of ex ante obligations on operators so designated.
- (6) The Recommendation identifies as a relevant market susceptible to ex ante regulation the wholesale national market for international roaming on public mobile networks. However, the work undertaken by the national regulatory authorities (both individually and within the European Regulators Group) in analysing the wholesale national markets for international roaming has demonstrated that it has not yet been possible for a national regulatory authority to address effectively the high level of wholesale Community-wide roaming charges because of the difficulty in identifying undertakings with significant market power in view of the specific circumstances of international roaming, including its cross-border nature.
- (7) As regards the retail provision of international roaming services, the Recommendation does not identify any retail market for international roaming as a relevant market, owing among other things to the fact that international roaming services at retail level are not purchased independently but constitute only one element of a broader retail package purchased by customers from their home provider.
- (8) In addition, the national regulatory authorities responsible for safeguarding and promoting the interests of mobile customers

⁽¹⁾ OJ L 201, 31.7.2002, p. 37. Directive as amended by Directive 2006/24/EC (OJ L 105, 13.4.2006, p. 54).

⁽²⁾ OJ L 114, 8.5.2003, p. 45.

⁽³⁾ OJ C 165, 11.7.2002, p. 6.

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normally resident within their territory are not able to control the behaviour of the operators of the visited network, 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.

- (9) Accordingly, there is pressure for Member States to take measures to address the level of international roaming charges, but the mechanism for ex ante regulatory intervention by national regulatory authorities provided by the 2002 regulatory framework for electronic communications has not proved sufficient to enable those authorities to act decisively in the consumers' interest in this specific area.
- (10) Furthermore, the European Parliament resolution on European electronic communications regulation and markets 2004 ⁽¹⁾ called on the Commission to develop new initiatives to reduce the high costs of cross-border mobile telephone traffic, while the European Council of 23 and 24 March 2006 concluded that focused, effective and integrated information and communication technology (ICT) policies both at European and national level are essential to achieving the renewed Lisbon Strategy's goals of economic growth and productivity and noted in this context the importance for competitiveness of reducing roaming charges.
- (11) The 2002 regulatory framework for electronic communications, on the basis of considerations apparent at that time, was aimed at removing all barriers to trade between Member States in the area that it harmonised, inter alia, measures which affect roaming charges. However, this should not prevent the adaptation of harmonised rules in step with other considerations in order to find the most effective means of achieving a high level of consumer protection whilst improving the conditions for the functioning of the internal market.
- (12) The 2002 regulatory framework for electronic communications, in particular the Framework Directive, should therefore be amended to allow for a departure from the rules otherwise applicable, namely that prices for service offerings should be determined by commercial agreement in the absence of significant market power, and to thereby accommodate the introduction of complementary regulatory obligations which reflect the specific characteristics of Community-wide roaming services.
- (13) The retail and wholesale roaming markets exhibit unique characteristics which justify exceptional measures which go beyond the mechanisms otherwise available under the 2002 regulatory framework for electronic communications.
- (14) Regulatory obligations should be imposed at both retail and wholesale level to protect the interests of roaming customers, since experience has shown that reductions in wholesale prices for Community-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 these services could risk disrupting the orderly functioning of the Community-wide roaming market.
- (15) These regulatory obligations should take effect as soon as possible, while providing the operators concerned with a reasonable period to adapt their prices and service offerings to ensure compliance, and apply directly in all Member States.

⁽¹⁾ OJ C 285 E, 22.11.2006, p. 143.

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- (16) A common approach should be employed for ensuring that users of terrestrial public mobile telephone networks when travelling within the Community do not pay excessive prices for Community-wide roaming services when making or receiving voice calls, thereby achieving a high level of consumer protection while safeguarding competition between mobile operators 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 mobile operators can operate within a single coherent regulatory framework based on objectively established criteria.
- (17) The most effective and proportionate approach to regulating the level of prices for making and receiving intra-Community roaming calls is the setting at Community level of a maximum average per-minute charge at wholesale level and the limiting of charges at retail level through the introduction of a Eurotariff. The average wholesale charge should apply between any pair of operators within the Community over a specified period.
- (18) The Eurotariff should be set at a level which guarantees a sufficient margin to operators and encourages competitive roaming offerings at lower rates. Operators should actively offer a Eurotariff to all their roaming customers, free of charge, and in a clear and transparent manner.
- (19) This regulatory approach should ensure that retail charges for Community-wide roaming provide a more reasonable reflection of the underlying costs involved in the provision of the service than has been the case. The maximum Eurotariff that may be offered to roaming customers should therefore reflect a reasonable margin over the wholesale cost of providing a roaming service, whilst allowing operators the freedom to compete by differentiating their offerings and adapting their pricing structures to market conditions and consumer preferences. This regulatory approach should not apply to value added services.
- (20) This regulatory approach should be simple to implement and monitor in order to minimise the administrative burden both for the operators which are affected by its requirements and for the national regulatory authorities charged with its supervision and enforcement. It should also be transparent and immediately understandable to all mobile customers within the Community. Furthermore it should provide certainty and predictability to operators providing wholesale and retail roaming services. The level in monetary terms of the maximum per-minute charges at wholesale and retail level should therefore be specified in this Regulation.
- (21) The maximum average per-minute charge at wholesale level so specified should take account of the different elements involved in the making of a Community-wide roaming call, in particular the cost of originating and terminating calls over mobile networks and including overheads, signalling and transit. The most appropriate benchmark for call origination and for call termination is the average mobile termination rate for mobile network operators in the Community, based on information provided by the national regulatory authorities and published by the Commission. The maximum average per-minute charge established by this Regulation should therefore be determined taking into account the average mobile termination rate, which offers a benchmark for the costs involved. The maximum average per-minute charge at wholesale level should decrease annually to take account of reductions in mobile termination rates imposed by national regulatory authorities from time to time.

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- (22) The Eurotariff applicable at retail level should provide roaming customers with the assurance that they will not be charged an excessive price when making or receiving a regulated roaming call, whilst leaving the home operators sufficient margin to differentiate the products they offer to customers.
- (23) All consumers should have the option of choosing without additional charges or preconditions a simple roaming tariff which will not exceed regulated rates. A reasonable margin between wholesale costs and retail prices should ensure that operators cover all their specific roaming costs at retail level including appropriate shares of marketing costs and handset subsidies and are left with an adequate residual to yield a reasonable return. A Eurotariff is an appropriate means to provide both the consumer with protection and the operator with flexibility. In line with the wholesale level the maximum levels of the Eurotariff should decrease annually.
- (24) New roaming customers should be fully informed of the range of tariffs that exist for roaming within the Community, including the tariffs which are compliant with the Eurotariff. Existing roaming customers should be given the opportunity to choose a new tariff compliant with the Eurotariff or any other roaming tariff within a certain time frame. For existing roaming customers who have not made their choice within this time frame, it is appropriate to distinguish between those who had already opted for a specific roaming tariff or package before the entry into force of this Regulation and those who had not. The latter should be automatically accorded a tariff that complies with this Regulation. Roaming customers who already benefit from specific roaming tariffs or packages which suit their individual requirements and which they have chosen on that basis should remain on their previously selected tariff or package if, after having been reminded of their current tariff conditions, they fail to express a choice within the relevant time period. Such specific roaming tariffs or packages could include, for example, roaming flat-rates, non-public tariffs, tariffs with additional fixed roaming charges, tariffs with per-minute charges lower than the maximum Eurotariff or tariffs with set-up charges.
- (25) Providers of retail Community-wide roaming services should have a period within which to adjust their prices to comply with the limits laid down in this Regulation.
- (26) Similarly, providers of wholesale Community-wide roaming services should have an adaptation period to comply with the limits laid down in this Regulation.
- (27) Since this Regulation provides that the Directives making up the 2002 regulatory framework for electronic communications are without prejudice to any specific measure adopted for the regulation of Community-wide roaming charges for mobile voice telephony calls, and since providers of Community-wide roaming services may be required by this Regulation to make changes to their retail roaming tariffs in order to comply with the requirements of this Regulation, such changes should not trigger for mobile customers any right under national laws transposing the 2002 regulatory framework for electronic communications to withdraw from their contracts.
- (28) This Regulation should not prejudice innovative offers to consumers which are more advantageous than the maximum Eurotariff as defined in this Regulation, but rather should encourage innovative offers to roaming customers at lower rates. This Regulation does not require roaming charges to be reintroduced in cases where they have been abolished altogether, nor does it require existing roaming charges to be increased to the level of the limits set out in this Regulation.

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- (29) Home providers may offer a fair-use, all-inclusive, monthly flat-rate to which no charge limits apply. This flat-rate could cover Community-wide roaming voice and/or data communication services (including Short Message Service (SMS) and Multimedia Messaging Service (MMS)) within the Community.
- (30) To ensure that all users of mobile voice telephony may benefit from the provisions of this Regulation, the retail pricing requirements should apply regardless of whether roaming customers have a pre-paid or a post-paid contract with their home provider, and regardless of whether the home provider has its own network, is a mobile virtual network operator or is a reseller of mobile voice telephony services.
- (31) Where Community providers of mobile telephony services find the benefits of interoperability and end-to-end connectivity for their customers jeopardised by the termination, or threat of termination, of their roaming arrangements with mobile network operators in other Member States, or are unable to provide their customers with service in another Member State as a result of a lack of agreement with at least one wholesale network provider, national regulatory authorities should make use, where necessary, of the powers under Article 5 of the Access Directive to ensure adequate access and interconnection in order to guarantee such end-to-end connectivity and the interoperability of services, taking into account the objectives of Article 8 of the Framework Directive, in particular the creation of a fully functioning single market for electronic communications services.
- (32) In order to improve the transparency of retail prices for making and receiving regulated roaming calls within the Community and to help roaming customers make decisions on the use of their mobile telephones while abroad, providers of mobile telephony services should enable their roaming customers easily to obtain information free of charge on the roaming charges applicable to them when making or receiving voice calls in a visited Member State. Moreover, providers should give their customers, on request and free of charge, additional information on the per-minute or per-unit 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.
- (33) Transparency also requires that providers furnish information on roaming charges, in particular on the Eurotariff and the all-inclusive flat-rate should they offer one, when subscriptions are taken out and each time there is a change in roaming charges. Home providers should provide information on roaming charges by appropriate means such as invoices, the internet, TV advertisements or direct mail. Home providers should ensure that all their roaming customers are aware of the availability of regulated tariffs and should send a clear and unbiased communication to these customers describing the conditions of the Eurotariff and the right to switch to and from it.
- (34) The national regulatory authorities which are responsible for carrying out tasks under the 2002 regulatory framework for electronic communications should have the powers needed to supervise and enforce the obligations under this Regulation within their territory. They should also monitor developments in the pricing of voice and data services for mobile customers when roaming within the Community including, where appropriate, the specific costs related to roaming calls made and received in the outermost regions of the Community 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

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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.

- (35) In-country roaming in the outermost regions of the Community 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 Community roaming market. 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 Community-wide roaming services. To this end, the national authorities may take additional measures consistent with Community law.
- (36) In view of the fact that, in addition to voice telephony, new mobile data communication services are gaining ever more ground, this Regulation should make it possible to monitor market developments in those services too. The Commission, therefore, should also monitor the market for roaming data communication services, including SMS and MMS.
- (37) Member States should provide for a system of penalties to be applied in the event of breach of this Regulation.
- (38) Since the objectives of this Regulation, namely to establish a common approach to ensure that users of public mobile telephone networks when travelling within the Community do not pay excessive prices for Community-wide roaming services when making or receiving voice calls, thereby achieving a high level of consumer protection while safeguarding competition between mobile operators, cannot be sufficiently achieved by the Member States in a secure, harmonised and timely manner and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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.
- (39) This common approach should be established for a limited time period. This Regulation may, in the light of a review to be carried out by the Commission, be extended or amended. The Commission should review the effectiveness of this Regulation and the contribution which it makes to the implementation of the regulatory framework and the smooth functioning of the internal market and also examine the impact of this Regulation on the smaller mobile telephony providers in the Community and their position in the Community-wide roaming market,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

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1. This Regulation introduces a common approach to ensuring that users of public mobile communications networks when travelling within the Community do not pay excessive prices for Community-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

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competition and transparency in the market and offering both incentives for innovation and consumer choice.

It lays down rules on the charges that may be levied by mobile operators for the provision of Community-wide roaming services for voice calls and SMS messages originating and terminating within the Community and for packet switched data communication services used by roaming customers while roaming on a mobile communications network in another Member State. It applies both to charges levied between network operators at wholesale level and, where appropriate, to charges levied by home providers at retail level.

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2. This Regulation also lays down rules aimed at increasing price transparency and improving the provision of information on charges to users of Community-wide roaming services.

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

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4. The charge limits set out in this Regulation are expressed in euro. Where charges governed by Articles 3, 4, 4a and 4b and Article 6a(3) and (4) are denominated in other currencies, the initial limits pursuant to those Articles shall be determined in those currencies, in the case of Articles 3 and 4 by applying the reference exchange rates prevailing on 30 June 2007, and in the case of Articles 4a and 4b and Article 6a(3) and (4) by applying the reference exchange rates published on 6 May 2009 by the European Central Bank in the *Official Journal of the European Union*.

For the purposes of the subsequent reductions in those limits provided for in Articles 3(2), 4(2) and 6a(4), the revised values shall be determined by applying the reference exchange rates so published one month preceding the date from which the revised values apply. The same reference exchange rates shall be applied to revise annually the value of the charges governed by Articles 4a and 4b and Article 6a(3) where these charges are denominated in currencies other than the euro.

▼ B*Article 2***Definitions**

1. For the purposes of this Regulation, the definitions set out in Article 2 of the Access Directive, Article 2 of the Framework Directive, and Article 2 of the Universal Service Directive shall apply.

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

(a) 'Eurotariff' means any tariff not exceeding the maximum charge, provided for in Article 4, which a home provider may levy for the provision of regulated roaming calls in compliance with that Article;

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(b) 'home provider' means an undertaking that provides a roaming customer with terrestrial public mobile communications services either via its own network or as a mobile virtual network operator or reseller;

(c) 'home network' means a terrestrial public mobile communications network located within a Member State and used by a home provider for the provision of terrestrial public mobile communications services to a roaming customer;

(d) 'Community-wide roaming' means the use of a mobile telephone or other device by a roaming customer to make or receive intra-Community calls, to send or receive SMS messages, or to use packet switched data communications, while in a Member State

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other than that in which that customer's home network is located, by means of arrangements between the operator of the home network and the operator of the visited network;

- (e) '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 Community or received by a roaming customer, originating on a public communications network within the Community and terminating on a visited network;
- (f) 'roaming customer' means a customer of a provider of terrestrial public mobile communications services, by means of a terrestrial public mobile network situated in the Community, whose contract or arrangement with his home provider permits the use of a mobile telephone or other device to make or to receive calls, to send or receive SMS messages, or to use packet switched data communications on a visited network by means of arrangements between the operator of the home network and the operator of the visited network;
- (g) 'visited network' means a terrestrial public mobile communications network situated in a Member State other than that of the home network and permitting 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 operator of the home network;
- (h) 'Euro-SMS tariff' means any tariff not exceeding the maximum charge provided for in Article 4b, which a home provider may levy for the provision of regulated roaming SMS messages in accordance with that Article;
- (i) 'SMS message' means a Short Message Service text message, composed principally of alphabetical and/or numerical characters, capable of being sent between mobile and/or fixed numbers assigned in accordance with national numbering plans;
- (j) '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 Community or received by a roaming customer, originating on a public communications network within the Community and terminating on a visited network;
- (k) '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 telephone or other mobile device while it is connected to a visited network. A regulated data roaming service does not include the transmission or receipt of regulated roaming calls or SMS messages, but does include the transmission and receipt of MMS messages.

▼ B*Article 3***Wholesale charges for the making of regulated roaming calls**

1. The average wholesale charge that the operator of a visited network may levy from the operator of a roaming customer's home network for the provision of a regulated roaming call originating on that visited network, inclusive inter alia of origination, transit and termination costs, shall not exceed EUR 0,30 per minute.

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2. The average wholesale charge referred to in paragraph 1 shall apply between any pair of operators and shall be calculated over a twelve-month period or any such shorter period as may remain before the end of the period of application of a maximum average wholesale

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charge as provided for in this paragraph or the expiry of this Regulation. The maximum average wholesale charge shall decrease to EUR 0,28 and EUR 0,26, on 30 August 2008 and on 1 July 2009 respectively and shall further decrease to EUR 0,22 and EUR 0,18, on 1 July 2010 and on 1 July 2011 respectively.

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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 sold for the provision of wholesale roaming calls within the Community by the relevant operator over the relevant period. The operator of the visited network shall be permitted to make a distinction between peak and off-peak charges.

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However, with effect from 1 July 2009, 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 Community 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.

▼ B*Article 4***Retail charges for regulated roaming calls**

1. Home providers shall make available and actively offer to all their roaming customers, clearly and transparently, a Eurotariff as provided for in paragraph 2. This Eurotariff shall not entail any associated subscription or other fixed or recurring charges and may be combined with any retail tariff.

When making this offer, home providers shall remind any of their roaming customers who, before 30 June 2007, had chosen a specific roaming tariff or package of the conditions applicable to that tariff or package.

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2. The retail charge (excluding VAT) of a Eurotariff which a home provider may levy from its roaming customer for the provision of a regulated roaming call may vary for any roaming call but shall not exceed EUR 0,49 per minute for any call made or EUR 0,24 per minute for any call received. The price ceiling for calls made shall decrease to EUR 0,46 and EUR 0,43 and for calls received to EUR 0,22 and EUR 0,19, on 30 August 2008 and on 1 July 2009 respectively. The price ceiling for calls made shall further decrease to EUR 0,39 and EUR 0,35 and for calls received to EUR 0,15 and EUR 0,11 on 1 July 2010 and on 1 July 2011 respectively.

With effect from 1 July 2010, home providers shall not levy any charge from their roaming customers for the receipt by them of a roaming voicemail message. This shall be without prejudice to other applicable charges such as those for listening to such messages.

With effect from 1 July 2009 every home provider shall charge its roaming customers for the provision of any regulated roaming call to which a Eurotariff applies, whether made or received, on a per second basis.

By way of derogation from the third subparagraph, the home provider may apply an initial minimum charging period not exceeding 30 seconds to calls made which are subject to a Eurotariff.

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3. All roaming customers shall be offered a tariff as set out in paragraph 2.

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All existing roaming customers shall be given the opportunity by 30 July 2007 to opt deliberately for a Eurotariff or any other roaming tariff, and shall be allowed a period of two months within which to make their choice known to their home provider. The requested tariff shall be activated no later than one month after receipt by the home provider of the customer's request.

Roaming customers who within that period of two months have not expressed their choice shall automatically be provided with a Eurotariff as set out in paragraph 2.

However, roaming customers who before 30 June 2007 had already made a deliberate choice of a specific roaming tariff or package other than the roaming tariff which they would have been accorded in the absence of such choice, and who fail to express a choice pursuant to this paragraph, shall remain on their previously chosen tariff or package.

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4. Any roaming customer may request, at any point after the process set out in paragraph 3 has been completed, to switch to or from a Eurotariff. Any switch must be made within one working day of receipt of the request and free of charge and shall not entail conditions or restrictions pertaining to other elements of the subscription, save that where a roaming customer who has subscribed to a special roaming package which includes more than one roaming service (namely, voice, SMS and/or data) wishes to switch to a Eurotariff, the home provider may require the switching customer to forego the benefits of the other elements of that package. A home provider may delay a switch until the previous roaming tariff has been effective for a minimum specified period not exceeding three months.

*Article 4a***Wholesale charges for regulated roaming SMS messages**

1. With effect from 1 July 2009, the average wholesale charge that the operator of a visited network may levy from the operator of a roaming customer's home network, for the provision of a regulated roaming SMS message originating on that visited network, shall not exceed EUR 0,04 per SMS message.

2. The average wholesale charge referred to in paragraph 1 shall apply between any pair of operators and shall be calculated over a twelve-month period or any such shorter period as may remain before the expiry of this Regulation.

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

4. The operator of a visited network shall not levy from the operator of a roaming customer's home network any charge, 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 4b***Retail charges for regulated roaming SMS messages**

1. Home providers shall make available to all their roaming customers, clearly and transparently, a Euro-SMS tariff as provided for in paragraph 2. The Euro-SMS tariff shall not entail any associated

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subscription or other fixed or recurring charges and may be combined with any retail tariff, subject to the other provisions of this Article.

2. With effect from 1 July 2009, the retail charge (excluding VAT) of a Euro-SMS tariff which a home provider may levy from its roaming customer for a regulated roaming SMS message sent by that roaming customer may vary for any roaming SMS message but shall not exceed EUR 0,11.

3. Home providers shall not levy any charge from their roaming customers for the receipt by them of a regulated roaming SMS message.

4. From 1 July 2009 home providers shall apply a Euro-SMS tariff to all existing roaming customers automatically, with the exception of such roaming customers who have already made a deliberate choice of a specific roaming tariff or package by virtue of which they benefit from a different tariff for regulated roaming SMS messages than they would have been accorded in the absence of such a choice.

5. From 1 July 2009 home providers shall apply a Euro-SMS tariff to all new roaming customers who do not make a deliberate choice to select a different roaming SMS tariff or a tariff package for roaming services which includes a different tariff for regulated roaming SMS messages.

6. Any roaming customer may request to switch to or from a Euro-SMS tariff at any time. Any switch must be made within one working day of receipt of the request and free of charge and shall not entail conditions or restrictions pertaining to elements of the subscription other than roaming. A home provider may delay such a switch until the previous roaming tariff has been effective for a minimum specified period not exceeding three months. A Euro-SMS tariff may always be combined with a Eurotariff.

7. No later than 30 June 2009, home providers shall inform all their roaming customers individually about the Euro-SMS tariff, that it will apply from 1 July 2009 at the latest to all roaming customers who have not made a deliberate choice of a special tariff or package applicable to regulated SMS messages, and about their right to switch to and from it in accordance with paragraph 6.

*Article 4c***Technical characteristics of regulated roaming SMS messages**

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

*Article 6***Transparency of retail charges for regulated roaming calls and SMS messages**

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

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This basic personalised pricing information shall include the maximum charges the customer may be subject to under his tariff scheme for:

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

It shall also include the free of charge number referred to in paragraph 2 for obtaining more detailed information and information on the possibility of accessing emergency services by dialling the European emergency number 112 free of charge.

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 home provider to provide the service again.

Home providers shall provide blind or partially-sighted customers with this basic personalised pricing information automatically, by voice call, free of charge, if they so request.

2. In addition to paragraph 1, customers shall have the right to request and receive, free of charge, and irrespective of their location within the Community, more detailed personalised pricing information on the roaming charges that apply in the visited network to voice calls, SMS, MMS and other data communication services, 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 home provider.

3. Home providers shall provide all users with full information on applicable roaming charges, in particular on the Eurotariff and the Euro-SMS tariff, 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.

Home providers shall take the necessary steps to secure awareness by all their roaming customers of the availability of the Eurotariff and the Euro-SMS tariff. They shall in particular communicate to all roaming customers by 30 July 2007 the conditions relating to the Eurotariff and by 30 June 2009 the conditions relating to the Euro-SMS tariff, in each case in a clear and unbiased manner. They shall send a reminder at reasonable intervals thereafter to all customers who have opted for another tariff.

Article 6a

Transparency and safeguard mechanisms for regulated data roaming services

1. Home 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 3.

Where appropriate, home 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, home providers shall explain to their customers, in a clear and easily understandable manner, how to switch off these automatic data roaming connections in order to avoid uncontrolled consumption of data roaming services.

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2. From 1 July 2009 at the latest, an automatic message from the home provider shall inform the roaming customer that he is roaming and provide basic personalised tariff information on the charges applicable to the provision of regulated data roaming services to that roaming customer in the Member State concerned, except where the customer has notified his home provider that he does not require this information.

Such basic personalised tariff information shall be delivered to the roaming customer's mobile telephone or other device, for example by an SMS message, an e-mail or a pop-up window on the computer, every time the roaming customer enters a Member State other than that of his home network and initiates for the first time a regulated 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 home provider that he does not require the automatic tariff information shall have the right at any time and free of charge to require the home provider to provide this service again.

3. By 1 March 2010, each home provider shall grant to all their roaming customers the opportunity to opt deliberately and free of charge for a facility which provides 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 does not exceed a specified financial limit.

To this end, the home 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 these 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 home provider may establish limits expressed in volume, provided that the customer is informed in advance of the corresponding financial amounts. One of these 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 home provider may offer to its roaming customers other limits with different, that is, higher or lower, maximum monthly financial limits.

By 1 July 2010, the default limit in the second and third subparagraphs shall be applicable to all customers who have not opted for another limit.

Each home provider shall also ensure that an appropriate notification is sent to the roaming customer's mobile telephone or other 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. Customers shall have the right to require their operators to stop sending such notifications and shall have the right at any time and free of charge to require the home provider to provide the service again.

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

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services, unless and until the roaming customer requests the continued or renewed provision of those services.

From 1 November 2010, whenever a roaming customer requests to opt for or to remove a 'financial or volume limit' facility, the change must be made within one working day of receipt of the request, free of charge, and shall not entail conditions or restrictions pertaining to other elements of the subscription.

4. With effect from 1 July 2009:

- (a) the average wholesale charge that the operator of a visited network may levy from the operator of a roaming customer's home network for the provision of regulated data roaming services by means of that visited network shall not exceed a safeguard limit of EUR 1,00 on 1 July 2009, EUR 0,80 on 1 July 2010 and EUR 0,50 on 1 July 2011 per megabyte of data transmitted. The application of this safeguard limit shall not lead to any distortion or restriction of competition in the wholesale data roaming market in accordance with Article 8(2)(b) of the Framework Directive;
- (b) this average wholesale charge shall apply between any pair of operators and shall be calculated over a twelve-month period or any such shorter period as may remain before the expiry of this Regulation;
- (c) the average wholesale charge referred to in point (a) shall be calculated by dividing the total wholesale revenue received by the operator of the visited network from each operator of a home network 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.

▼ B*Article 7***Supervision and enforcement**

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

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2. National regulatory authorities shall make up-to-date information on the application of this Regulation, in particular Articles 3, 4, 4a, 4b and 6a, publicly available in a manner that enables interested parties to have easy access to it.

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3. National regulatory authorities shall in preparation for the review provided for in Article 11, 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 299(2) of the Treaty. National regulatory authorities shall also be alert to the particular case of involuntary roaming in the border regions of neighbouring Member States and monitor whether traffic steering techniques are used to the disadvantage of customers. They shall communicate the results of such monitoring to the Commission, including separate information on corporate, post-paid and pre-paid customers, every six months.

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

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5. National regulatory authorities may intervene on their own initiative in order to ensure compliance with this Regulation. In particular, they shall, where necessary, make use of the powers under Article 5 of the Access Directive to ensure adequate access and interconnection in order to guarantee the end-to-end connectivity and interoperability of roaming services, for example where subscribers are unable to exchange regulated roaming SMS messages with subscribers of a terrestrial mobile network in another Member State as a result of the absence of an agreement enabling the delivery of those messages.

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

*Article 8***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 20 and 21 of the Framework Directive shall apply.

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 34 of the Universal Service Directive are available.

▼ M1*Article 9***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 must be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission no later than 30 March 2008 or, in the case of the additional requirements introduced in Article 3(2) and (3), Article 4(2) and (4) and Articles 4a, 4b, 4c, 6, 6a and 7 by Regulation (EC) No 544/2009 ⁽¹⁾, no later than 30 March 2010 and shall notify it without delay of any subsequent amendment affecting them.

▼ B*Article 10***Amendment to Directive 2002/21/EC (Framework Directive)**

The following paragraph shall be added to Article 1 of Directive 2002/21/EC (Framework Directive):

‘5. This Directive and the Specific Directives shall be without prejudice to any specific measure adopted for the regulation of international roaming on public mobile telephone networks within the Community.’

▼ M1*Article 11***Review**

1. The Commission shall review the functioning of this Regulation and, after a public consultation, shall report to the European Parliament and the Council no later than 30 June 2011. The Commission shall

⁽¹⁾ OJ L 167, 29 June 2009, p. 12.

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evaluate in particular whether the objectives of this Regulation have been achieved. In so doing, the Commission shall review, *inter alia*:

- the developments in wholesale and retail charges for the provision to roaming customers of voice, SMS and data communication services, and the corresponding development in mobile communications services at domestic level in the Member States, both for pre-paid and post-paid customers separately, and in the quality and speed of these services,
- the availability and quality of services including those which are an alternative to roaming (voice, SMS and data), in particular in the light of technological developments,
- the extent to which consumers have benefited through real reductions in the price of roaming services or in other ways from reductions in the costs of the provision of roaming services and the variety of tariffs and products which are available to consumers with different calling patterns,
- the degree of competition in both the retail and wholesale markets, in particular the competitive situation of smaller, independent or newly started operators, including the competition effects of commercial agreements and the degree of interconnection between operators.

The Commission shall also assess methods other than price regulation which could be used to create a competitive internal market for roaming and in so doing shall have regard to an analysis carried out independently by a body of European regulators for electronic communications. On the basis of this assessment the Commission shall make appropriate recommendations.

2. In addition, the Commission shall, no later than 30 June 2010, prepare an interim report to the European Parliament and the Council, which shall include a summary of the monitoring of the provision of roaming services in the Community and an assessment of the progress towards achieving the objectives of this Regulation, including by reference to the matters referred to in paragraph 1.

▼B*Article 12***Notification requirements**

Member States shall notify to the Commission ►**M1** ————— ◀ the identity of the national regulatory authorities responsible for carrying out tasks under this Regulation.

*Article 13***Entry into force and expiry**

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall expire on 30 June ►**M1** 2012 ◀.

This Regulation shall be binding in its entirety and directly applicable in all Member States.