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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)

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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 (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community³ has been substantially amended. Since further amendments are to be made, it should be recast in the interests of clarity.
- (2) The high level of voice, SMS and data roaming 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 Union is a matter of concern for consumers, national regulatory authorities, and the Union 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 somewhat lower prices, there is still evidence that the relationship between costs and prices is far from what would prevail in competitive markets.

¹ OJ C [...], [...], p. [...].

² OJ C , , p. .

³ OJ L 171, 29.6.2007, p. 32.

- (3) 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'.
- (4) 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)⁴, 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)⁵, 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)⁶, 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)⁷ and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)⁸ (hereinafter together referred to as 'the 2002 regulatory framework for electronic communications') aim to create an internal market for electronic communications within the Union while ensuring a high level of consumer protection through enhanced competition.
- (5) Regulation (EC) No 717/2007 is not an isolated measure, but complements and supports, insofar as Union-wide roaming is concerned, the rules provided for by the 2002 regulatory framework for electronic communications. That framework has not provided national regulatory authorities with sufficient tools to take effective and decisive action with regard to the pricing of roaming services within the Union and thus fails to ensure the smooth functioning of the internal market for roaming services. Regulation (EC) No 717/2007 is an appropriate means of correcting this situation.
- (6) The 2002 regulatory framework for electronic communications draws on the principle that ex ante regulatory obligations should only be imposed where there is not effective competition, providing for a process of periodic market analysis and review of obligations by national regulatory authorities, leading to the imposition of ex ante obligations on operators designated as having significant market power. The elements constituting this process include the definition of relevant markets in accordance with the Commission's Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC⁹ (hereinafter referred to as 'the Recommendation'), the analysis of the defined markets in accordance with the Commission's guidelines on market analysis and the assessment of significant market power under the Union regulatory framework for electronic communications networks and services¹⁰, the

⁴ OJ L 108, 24.4.2002, p. 7.

⁵ OJ L 108, 24.4.2002, p. 21.

⁶ OJ L 108, 24.4.2002, p. 33.

⁷ OJ L 108, 24.4.2002, p. 51.

⁸ OJ L 201, 31.7.2002, p. 37.

⁹ OJ L 114, 8.5.2003, p. 45.

¹⁰ OJ C 165, 11.7.2002, p. 6.

designation of operators with significant market power and the imposition of ex ante obligations on operators so designated.

- (7) The Recommendation identified as a relevant market susceptible to ex ante regulation the wholesale national market for international roaming on public mobile networks. However, the work undertaken by the national regulatory authorities, both individually and within the European Regulators Group (ERG) and its successor the Body of European Regulators for Electronic Communications (BEREC) established by Regulation (EC) No 1211/2009 of the European Parliament and of the Council¹¹, in analysing the wholesale national markets for international roaming has demonstrated that it has not yet been possible for a national regulatory authority to address effectively the high level of wholesale Union-wide roaming charges because of the difficulty in identifying undertakings with significant market power in view of the specific circumstances of international roaming, including its cross-border nature. Following the entry into force of Regulation (EC) No 717/2007, the roaming market was withdrawn from the revised Recommendation¹².
- (8) In addition, the national regulatory authorities responsible for safeguarding and promoting the interests of mobile customers normally resident within their territory are not able to control the behaviour of the 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 markets¹³ 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 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 enhancing competition in the internal market for roaming services and achieving a high level of consumer protection.

¹¹ OJ L 337, 18.12.2009, p. 1.

¹² OJ L 344/65 28.12.2007, [unclear reference, please redart]

¹³ OJ C 285 E, 22.11.2006, p. 143.

- (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 Union-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) A common 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 when making or receiving voice calls, thereby enhancing competition concerning roaming services between mobile operators, 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 mobile operators can operate within a single coherent regulatory framework based on objectively established criteria.
- (15) Regulation (EC) No 717/2007, as amended by Regulation (EC) No 544/2009, is valid until 30 June 2012. Prior to its expiry, the Commission has carried out a review in accordance with its Article 11, where it was required to evaluate whether the objectives of that Regulation had been achieved and to review developments in wholesale and retail charges for the provision to roaming customers of voice, SMS and data communications services. In its report to the European Parliament and the Council of [XX June 2011] on the outcome of the review of the functioning of Regulation (EC) No 717/2007, the Commission concluded that it was appropriate to extend the regulation beyond 30 June 2012.
- (16) Data on the development of prices for Union-wide voice, SMS and data roaming services since the entry into force of Regulation (EC) No 717/2007 and its amending Regulation (EC) No 544/2009, including in particular those collected by national regulatory authorities and reported on a quarterly basis through the medium of the BEREC, do not provide evidence to suggest that competition at the retail or wholesale levels has reasonably developed and is likely to be sustainable from June 2012 onwards in the absence of regulatory measures. Such data indicates that retail and wholesale prices continue to cluster at or close to the limits set by Regulation (EC) No 717/2007 as amended by Regulation (EC) No 544/2009, with only limited competition below those limits.
- (17) The expiry in June 2012 of the regulatory safeguards which apply to Union-wide roaming services at wholesale and retail levels by virtue of Regulation (EC) No 717/2009, as amended by Regulation (EC) No 544/2009, would therefore give rise to a significant risk that the underlying lack of competitive pressures in the roaming market and the incentive for mobile operators to maximise their roaming revenues would result in retail and wholesale prices for Union-wide roaming that do not constitute a reasonable reflection of the underlying costs involved in the provision of the service, thereby jeopardising the objectives of this Regulation. Regulatory intervention in the market for mobile roaming services should therefore be extended beyond 30 June 2012 in order to ensure the smooth functioning of the internal market by allowing

competition to develop, while at the same time guaranteeing that consumers continue to benefit from the assurance that they will not be charged an excessive price, in comparison with competitive national prices.

- (18) In order to allow for the development of a more efficient and competitive market for roaming services, there should be no restrictions that prevent undertakings from effectively negotiating wholesale access for the purpose of providing roaming services. However, at present there are obstacles to the access to such wholesale roaming services, due to differences in negotiating power and in the degree of infrastructure ownership of undertakings. The removal of these obstacles would facilitate the development of alternative and innovative roaming services and offers for customers, in particular from virtual network operators. It would also facilitate the development of pan-European services.
- (19) Therefore rules should be introduced to mandate the obligation to meet reasonable requests for wholesale access to public mobile communications networks for the purpose of providing roaming services. Such requests should only be refused on the basis of objective and duly substantiated criteria, which should be determined on a case by case basis by the national regulatory authorities following the dispute resolution procedure referred to in Article 17. 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 would avoid distortions between Member States.
- (20) A wholesale roaming access obligation should cover access to all the elements and facilities necessary to enable the provision of roaming services, such as the following elements: access to network elements and associated facilities; access to relevant software systems including operational support systems; access to information systems or databases for pre-ordering, provisioning, ordering, maintaining and repair requests, and billing; access to number translation or systems offering equivalent functionality; access to mobile networks, and access to virtual network services.
- (21) Mobile communications services are sold in bundles including both domestic and roaming services which limits customer choice for roaming services. Such bundles reduce transparency concerning roaming services, since it is difficult to compare individual items within the bundles. Consequently, competition among operators on the basis of the roaming element in the mobile bundle is not yet apparent. Facilitating the availability of roaming as a stand-alone service would address structural problems by raising consumer awareness of roaming prices, allowing distinct consumer choice concerning roaming services and thus increasing competitive pressure on the demand side. This will therefore contribute to the smooth functioning of the internal market for European roaming services.
- (22) Consumers should have the right to opt for the separate sale of roaming services from their domestic mobile package. Basic principles should be laid down with regard to the provision of a separate sale of roaming services which should be introduced in a coordinated manner across the Union. Consumers should be able to choose a different provider for roaming services without changing their number, and in a manner which

ensures interoperability of services, with roaming services being provided anywhere in the Union and with the same level of quality.

- (23) Increased cooperation and coordination among mobile network operators should be established to technically enable the provision of separate roaming services, and to ensure coordinated and sound technical evolution of the separate sale of roaming services in the Union. Therefore, guidelines detailing further the relevant basic principles and methodologies should be elaborated, in order to allow a rapid adaptation to changed circumstances and technological advancement. BEREC, in coordination with the Commission and in collaboration with the relevant stakeholders, should issue guidelines to develop the technical elements of a facility to enable the separate sale of roaming services. The Commission could give a mandate to a European Standardisation Body for the amendment of the relevant standards that are necessary for the harmonised implementation of the facility.
- (24) It is considered that for the separate sale of roaming services to be fully effective, it needs to be combined with the wholesale access obligation for the provision of roaming services to facilitate market entry by new or existing players including cross-border roaming services providers. This solution will avoid distortions between Member States by ensuring a consistent regulatory approach thereby contributing to the development of the single market. However, this solution in roaming services will require a reasonable period for operators to adapt at the technical level, and therefore will only result in a genuine internal market with sufficient competition after a certain period of time. For this reason, price caps for the wholesale charges for voice, SMS messages and data roaming services as well as safeguard caps for those service at the retail level should be maintained on a temporary basis at an appropriate level to ensure that the existing consumer benefits are preserved during a transitional period of implementation of such structural solutions, after which they could be removed
- (25) With regard to continuation of temporary price regulation, 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 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 these services could risk disrupting the orderly functioning of the Union-wide roaming market and would not allow a higher degree of competition.
- (26) Until the structural solutions have brought sufficient competition in the roaming market, the most effective and proportionate approach to regulating the level of prices for making and receiving intra-Union roaming calls is the setting at Union level of a maximum average per-minute charge at wholesale level and the limiting of charges at retail level through the Eurotariff introduced in Regulation (EC) No 717/2007. The average wholesale charge should apply between any pair of operators within the Union over a specified period.
- (27) The transitory Eurotariff should be set at a safeguard level which, whilst ensuring that the existing consumer benefits are preserved during a transitional period of implementing the structural solutions, guarantees a sufficient margin to operators and encourages competitive roaming offerings at lower rates. During the period concerned, operators should actively offer a Eurotariff to all their roaming customers, free of charge, and in a clear and transparent manner.

- (28) The transitory Eurotariff to be offered to roaming customers should 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. Such safeguard caps should be set at levels which do not distort the competitive benefits of structural solutions and could be removed once the structural solutions have had an opportunity to deliver concrete gains for customers. This regulatory approach should not apply to value added services.
- (29) 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 Union. Furthermore it should provide certainty and predictability to operators providing wholesale and retail roaming services. The level in monetary terms of the maximum per-minute charges at wholesale and retail level should therefore be specified in this Regulation.
- (30) The maximum average per-minute charge at wholesale level so specified should take account of the different elements involved in the making of a Union-wide roaming call, in particular the cost of originating and terminating calls over mobile networks and including overheads, signalling and transit. The most appropriate benchmark for call origination and for call termination is the average mobile termination rate for mobile network operators in the Union, based on information provided by the national regulatory authorities and published by the 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.
- (31) The transitory 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.
- (32) During the transitional period of safeguard caps, 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 transitory 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.
- (33) During the transitional period of safeguard caps, new roaming customers should be fully informed of the range of tariffs that exist for roaming within the Union, including the tariffs which are compliant with the transitory Eurotariff. Existing roaming customers should be given the opportunity to choose a new tariff compliant with the transitory 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.

- (34) 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 Union-wide roaming charges for mobile voice telephony calls, and since providers of Union-wide roaming services may be required by this Regulation to make changes to their retail roaming tariffs in order to comply with the requirements of this Regulation, such changes should not trigger for mobile customers any right under national laws transposing the 2002 regulatory framework for electronic communications to withdraw from their contracts.
- (35) This Regulation should not prejudice innovative offers to consumers which are more advantageous than the transitory Eurotariff as defined in this Regulation, but rather should encourage innovative offers to roaming customers at lower rates in particular in response to the additional competitive pressure created by the structural provisions of this Regulation. This Regulation does not require roaming charges to be reintroduced in cases where they have been abolished altogether, nor does it require existing roaming charges to be increased to the level of the transitional safeguard limits set out in this Regulation.
- (36) Where charge limits are not denominated in euro, the applicable charge limits for the initial limits and the revised values of those limits should be determined in the relevant currency by applying the reference exchange rates 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.
- (37) 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 these operators and those applying different billing methods and undermines the consistent application of the wholesale price limits introduced by 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 operators should therefore be required to bill for the wholesale provision of regulated roaming calls on a per second basis.
- (38) The ERG, the predecessor of the BEREC, has estimated that the practice of mobile operators of using charging intervals of more than one second when billing for roaming services at retail level has added 24 % to a typical Eurotariff bill for calls

made and 19 % for calls received. They also stated that these increases represent a form of hidden charge since they are not transparent to most consumers. For this reason, the ERG recommended urgent action to address the different billing practices at retail level applied to the Eurotariff.

- (39) While Regulation (EC) No 717/2007, by introducing a Eurotariff in the Union, established a common approach to ensuring that roaming customers are not charged excessive prices for regulated roaming calls, the different billing unitisation practices employed by mobile operators seriously undermines its consistent application. This also means that, despite the Union-wide, cross-border nature of intra-Union roaming services, there are divergent approaches in relation to the billing of regulated roaming calls which distort competitive conditions in the single market.
- (40) A common set of rules regarding unitisation of Eurotariff bills at retail level should therefore be introduced in order to further strengthen the single market and provide throughout the Union a common level of protection to consumers of Union-wide roaming services.
- (41) Providers of regulated roaming calls at the retail level should therefore be required to bill their customers on a per second basis for all calls subject to a Eurotariff, subject only to the possibility to apply a minimum initial charging period of no more than 30 seconds for calls made. This will enable operators to cover any reasonable set-up costs and to provide flexibility to compete by offering shorter minimum charging periods. However, no minimum initial charging period is justified in the case of Eurotariff calls received, as the underlying wholesale cost is charged on a per second basis and any specific set-up costs are already covered by mobile termination rates.
- (42) Customers should not have to pay for receiving voice mail messages in a visited network, as they cannot control the duration of such messages. This should be without prejudice to other applicable voice mail charges, for example charges for listening to such messages.
- (43) With regard to SMS roaming services, as is the case for voice roaming calls, there is a significant risk that imposing wholesale pricing obligations alone would not result automatically in lower rates for retail customers. On the other hand, action to reduce the level of retail prices without addressing the level of the wholesale costs associated with the provision of these services could prejudice the position of some operators, in particular smaller operators, by increasing the risk of price squeeze.
- (44) Furthermore, because of the particular structure of the roaming market and its cross-border nature, the 2002 regulatory framework has not provided national regulatory authorities with suitable tools to address effectively the competitive problems underlying the high level of wholesale and retail prices for regulated roaming SMS services. This fails to ensure the smooth functioning of the internal market and should be corrected.
- (45) Regulatory obligations should therefore be imposed with regard to regulated roaming SMS services at wholesale level, in order to establish a more reasonable relationship between wholesale charges and the underlying costs of provision, and at retail level for a transitional period to protect the interests of roaming customers until the structural solution becomes effective.

- (46) Until the structural solution have brought sufficient competition in the roaming market, the most effective and proportionate approach to regulating the level of prices for regulated roaming SMS messages at wholesale level is the setting at Union level of a maximum average charge per SMS sent from a visited network. The average wholesale charge should apply between any pair of mobile operators within the Union over a specified period.
- (47) The wholesale price limit for regulated roaming SMS should include all costs incurred by the provider of the wholesale service, including, inter alia, origination, transit and the unrecovered cost of termination of roaming SMS messages on the visited network. Wholesale providers of regulated roaming SMS services should therefore be prohibited from introducing a separate charge for the termination of roaming SMS messages on their network, in order to ensure the consistent application of the rules established by this Regulation.
- (48) In order to ensure that the regulated caps for wholesale roaming SMS services are closer to levels reflecting underlying costs of provision and that competition can develop at the retail level, the wholesale price limits for regulated SMS should follow subsequent reductions.
- (49) Regulation (EC) No 544/2009 considered that, in the absence of structural elements introducing competition in the roaming market, the most effective and proportionate approach to regulating the level of prices for Union-wide roaming SMS messages at the retail level was the introduction of a requirement for mobile operators to offer their roaming customers a Euro-SMS tariff which does not exceed a specified maximum price limit.
- (50) Until the structural solutions become effective, the transitory Euro-SMS tariff should be retained at a safeguard level which, whilst ensuring that the existing consumer benefits are preserved, guarantees a sufficient margin to operators while also more reasonably reflecting the underlying retail costs.
- (51) The transitory Euro-SMS tariff that may be offered to roaming customers should therefore reflect a reasonable margin over the costs of providing a regulated roaming SMS service, whilst allowing operators the freedom to compete by differentiating their offerings and adapting their pricing structures to market conditions and consumer preferences. Such safeguard cap should be set at level which do not distort the competitive benefits of structural solutions and could be removed once the structural solution becomes effective. This regulatory approach should not apply to value-added SMS services.
- (52) Roaming customers should not be required to pay any additional charge for receiving a regulated roaming SMS or voicemail message while roaming on a visited network, since such termination costs are already compensated by the retail charge levied for the sending of a roaming SMS or voicemail message.
- (53) A Euro-SMS tariff should automatically apply to any new or existing roaming customer who has not deliberately chosen or does not deliberately choose a special SMS roaming tariff or a package for roaming services including regulated roaming SMS services.

- (54) An SMS message is a Short Message Service text message and is clearly distinct from other messages such as MMS messages or e-mails. In order to ensure that the Regulation is not deprived of its effectiveness and that its objectives are fully met, any changes to the technical parameters of a roaming SMS message which would differentiate it from a domestic SMS message should be prohibited.
- (55) Data collected by national regulatory authorities indicate that high prices for average wholesale charges for data roaming services levied by visited network operators from roaming customers' home providers persist, even if these wholesale prices appear to be on a downward trend.
- (56) The persistence of high wholesale charges for data roaming services is primarily attributable to high wholesale prices charged by operators of non-preferred networks. Such charges are caused by traffic steering limitations which leave operators with no incentive to reduce their standard wholesale prices unilaterally since the traffic will be received irrespective of the price charged. This results in an extreme variation in wholesale costs. In some cases the wholesale data roaming prices applicable to non-preferred networks are 6 times higher than those applied to the preferred network. These excessively high wholesale charges for data roaming services lead to appreciable distortions of competitive conditions between mobile operators within the Union which undermine the smooth functioning of the internal market. They also constrain the ability of home providers to predict their wholesale costs and therefore to provide their customers with transparent and competitive retail pricing packages. In view of the limitations on the ability of national regulatory authorities to deal with these problems effectively at national level, a wholesale price limit on data roaming services should apply. Regulatory obligations should therefore be imposed with regard to regulated data roaming services at wholesale level, in order to establish a more reasonable relationship between wholesale charges and the underlying costs of provision, and at retail level to protect the interests of roaming customers.
- (57) Providers of roaming services should not charge the roaming customer for any regulated data roaming service, unless and until the roaming customer accepts the provision of the service.
- (58) The scope of this Regulation should be extended to cover the provision within the Union of retail data roaming services. The special characteristics exhibited by the international roaming markets, which justified the adoption of Regulation (EC) No 717/2007 and the imposition of obligations on mobile operators with regard to the provision of Union-wide voice roaming calls and SMS messages, apply equally to the provision of Union-wide retail data roaming services. Like voice roaming and SMS services, data roaming services are not purchased independently at national level but constitute only part of a broader retail package purchased by customers from their home provider, thereby limiting the competitive forces at play. Likewise, because of the cross-border nature of the services concerned, national regulatory authorities which are responsible for safeguarding and promoting the interests of mobile customers resident within their territory are not able to control the behaviour of the operators of the visited network, situated in other Member States.
- (59) Similarly to the regulatory measures already in place for voice and SMS services, until the structural solution brings sufficient competition, the most effective and proportionate approach to regulating the level of prices for Union-wide roaming data services at the retail level for a transitional period is the introduction of a requirement

for mobile operators to offer their roaming customers a transitory Euro-data tariff which does not exceed a specified maximum price limit. The Euro-data tariff should be set at a safeguard level which, whilst ensuring consumer protection until the structural solution becomes effective, guarantees a sufficient margin to operators while also more reasonably reflecting the underlying retail costs.

- (60) The transitory Euro-data tariff that may be offered to roaming customers should therefore reflect a reasonable margin over the costs of providing a regulated data roaming service, whilst allowing operators the freedom to compete by differentiating their offerings and adapting their pricing structures to market conditions and consumer preferences. Such safeguard cap should be set at levels which do not distort the competitive benefits of structural solutions and could be removed once the structural solutions have had an opportunity to deliver concrete gains for customers. Similar to the approach followed for voice and SMS roaming services, given the reductions foreseen in the underlying costs for the provision of retail data roaming services, the maximum regulated charges for the transitory Euro-data tariff should follow a declining glide path.
- (61) A transitory Euro-data tariff should automatically apply to any new or existing roaming customer who has not deliberately chosen or does not deliberately choose a special data roaming tariff or a package for roaming services including regulated data roaming services.
- (62) In order to ensure that consumers pay for the data services they actually consume and that the similar problem observed with voice services after the introduction of Regulation (EC) No 717/2007 of the hidden charges for the consumer due to the charging mechanisms applied by operators, the transitory Euro-data tariff should be billed on a per kilobyte basis. This is consistent with the charging mechanism already applicable at the wholesale level.
- (63) Home providers may offer a fair-use, all-inclusive, monthly flat-rate to which no charge limits apply, which could cover all Union-wide roaming services.
- (64) To ensure that all users of mobile voice telephony may benefit from the provisions of this Regulation, the transitory retail pricing requirements should apply regardless of whether roaming customers have a pre-paid or a post-paid contract with their 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.
- (65) In order to ensure that regulatory obligations on wholesale and retail charges for voice, SMS and data roaming services are not maintained longer than necessary when the structural solutions are fully in place and competition is sufficiently developed in the roaming market, conditions should be set for non-application of maximum wholesale and retail charges already before the deadlines foreseen. Such conditions should be based on a significant difference between price caps and actual price levels. It is considered that a significant difference will be reached if prices have on average in the Union reached 75% of the price cap. For wholesale price caps the 75% criterion shall be based on the unbalanced traffic between operators that do not belong to the same group. In order to limit distortions between Member States, the 75% criterion for retail price caps shall be calculated by averaging at the Union level the national averages for each roaming service separately (voice, SMS or data).

- (66) Where Union providers of mobile telephony services find the benefits of interoperability and end-to-end connectivity for their customers jeopardised by the termination, or threat of termination, of their roaming arrangements with mobile network operators in other Member States, or are unable to provide their customers with service in another Member State as a result of a lack of agreement with at least one wholesale network provider, national regulatory authorities should make use, where necessary, of the powers under Article 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.
- (67) In order to improve the transparency of retail prices for making and receiving regulated roaming calls within the Union 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. Since certain customer groups might be well informed about roaming charges operators should provide a possibility to easily opt-out from this automatic message service.
- (68) 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 for the period concerned 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.
- (69) Moreover, measures should be introduced to improve the transparency of retail prices for data roaming services, in particular to eliminate the problem of 'bill shock' which constitutes a barrier to the smooth functioning of the internal market, and to provide roaming customers with the tools they need to monitor and control their expenditure on data roaming services. Equally, there should be no obstacles to the emergence of applications or technologies which can be a substitute for, or alternative to, roaming services, such as WiFi. Consumers should be provided with this information, thereby allowing them to make an informed choice.
- (70) In particular, mobile operators should provide their roaming customers with personalised tariff information on the charges applicable to those customers for data roaming services every time they initiate a data roaming service on entering another Member State. This information should be delivered to their mobile telephone or other mobile device in the manner best suited to its easy receipt and comprehension.
- (71) In order to facilitate customers' understanding of the financial consequences of the use of regulated data roaming services and to permit them to monitor and control their

expenditure, the home provider should give examples for data roaming applications, such as e-mail, picture and web-browsing, by indicating their approximate size in terms of data usage.

- (72) In addition, in order to avoid bill shocks, mobile operators should define one or more maximum financial and/or volume limits for their outstanding charges for data roaming services, expressed in the currency in which the roaming customer is billed, and which they should offer to all their roaming customers, free of charge, with an appropriate notification when this limit is being approached. Upon reaching this maximum limit, customers should no longer receive and 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. Roaming customers should be given the opportunity to opt for any of these 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.
- (73) These transparency measures should be seen as minimum safeguards for roaming customers, and should not preclude mobile operators from offering their customers a range of other facilities which help them to predict and control their expenditure on data roaming services. For example, many operators are developing new retail flat rate roaming offers which permit data roaming for a specified price over a specified period up to a 'fair use' volume limit. Likewise operators are developing systems to enable their roaming customers to be updated on a real-time basis on their accumulated outstanding data roaming charges. To ensure the smooth functioning of the internal market, these developments on the domestic markets should be reflected in the harmonised rules.
- (74) However, since the entry into force of the amendments introduced by Regulation (EC) No 544/2009, it has been observed that it is less probable that customers under pre-paid tariffs suffer from "bill shocks" for the use of data roaming services, given that the amount of credit available is already chosen in advance. In addition, with the transitory Euro-data tariff with regulated rates for data roaming charges, these consumers will also benefit from additional protection against high prices for these services. For these reasons, the cut off limit provisions should not apply to customers under pre-paid contracts.
- (75) 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 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.
- (76) 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 Union 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 Union-wide roaming services. To this end, the national authorities may take additional measures consistent with Union law.

- (77) Member States should provide for a system of penalties to be applied in the event of breach of this Regulation.
- (78) 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 Union do not pay excessive prices for Union-wide roaming services, thereby achieving a high level of consumer protection by enhancing 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 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.
- (79) Regulatory obligations on wholesale charges for voice, SMS and data roaming services should be maintained until the structural solutions has become effective and competition in the wholesale markets has sufficiently developed. In addition, market trends currently show that data services will progressively become the most relevant segment of mobile services, and wholesale data roaming services currently exhibit the highest level of dynamism, with prices reasonably below the current regulated rates.
- (80) Retail safeguard caps should be set at sufficiently high levels which do not distort the potential competitive benefits of structural solutions and could be removed completely once the structural approaches becomes effective and have enabled the development of a genuine single market. Therefore, retail safeguard caps should follow a downward trend and subsequently expire.
- (81) The Commission should review the effectiveness of this Regulation in light of its objectives and the contribution to the implementation of the regulatory framework and the smooth functioning of the internal market. In this context, the Commission should consider the impact on the competitive position of mobile communications providers of different sizes and from different parts of the Union, the developments, trends and transparency in retail and wholesale charges, their relation to actual costs, the extent to which the assumptions made in the impact assessment that accompanied this Regulation have been confirmed and the costs of compliance of operators and the impact on the investments. The Commission should also, in the light of technological developments, consider the availability and quality of services which are an alternative to roaming (such as access through WIFI).
- (82) Prior to the abovementioned review, and in order to ensure the continuous monitoring of roaming services in the Union, the Commission should prepare an interim report to the European Parliament and the Council every two years which includes a general summary of the latest trends in roaming services and an intermediary assessment of the progress towards achieving the objectives of this Regulation and of the possible alternative options for achieving these objectives.

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

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

It lays down rules to guarantee the separate sale of roaming services from domestic mobile communications services and the conditions for wholesale access to public mobile telephone networks for the purpose of provision of roaming services. It also lays down transitory rules on the charges that may be levied by mobile operators for the provision of Union-wide roaming services for voice calls and SMS messages originating and terminating within the Union and for packet switched data communication services used by roaming customers while roaming on a mobile communications network in another Member State. It applies both to charges levied between network operators at wholesale level and to charges levied by home providers at retail level.

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

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

4. The charge limits set out in this Regulation are expressed in euro. Where charges governed by Articles 6, 7, 8, 9, 11 and 12 are denominated in other currencies, the initial limits pursuant to those Articles shall be determined in those currencies by applying the reference exchange rates published on 30 May 2012 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 6(2), 7(2), 8(1), 11(1) and 12(2), 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.

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 7, which a home provider may levy for the provision of regulated roaming calls in compliance with that Article;
- (b) 'home provider' means an undertaking that provides a customer with Union-wide roaming 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) 'Union-wide roaming' means the use of a mobile telephone or other device by a roaming customer to make or receive intra-Union calls, to send or receive SMS messages, or to use packet switched data communications, while in a Member State 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 Union or received by a roaming customer, originating on a public communications network within the Union 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 Union, whose contract or arrangement with his home provider permits the use of a mobile 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 9, 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 Union or received by a roaming customer, originating on a public communications network within the Union 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;
- (l) 'Euro-data tariff' means any tariff not exceeding the maximum charge provided for in Article 12, which a home provider may levy for the provision of regulated data roaming services in accordance with that Article;
- (m) 'alternative roaming provider' means a home provider, different from the operator providing domestic mobile communication services, that provides a roaming customer with roaming services via its own network or as a mobile virtual network operator or reseller;
- (n) 'wholesale roaming access' means the making available of facilities and/or services to another undertaking, under defined conditions, for the purpose of providing roaming services to retail customers;
- (o) 'European Union (EU) roaming profile' means a preconfigured profile for the provision of separate roaming services, which is provided in addition to a profile for the provision of domestic mobile services on the same SIM card.

Article 3

Wholesale roaming access

1 Mobile network operators shall meet all reasonable requests for wholesale roaming access, including those from mobile virtual network operators and resellers. Rules on regulated wholesale roaming tariffs laid down in Articles 6, 8 and 11 shall apply for the provision of wholesale roaming access.

2. Wholesale roaming access shall cover access to all network elements and associated facilities, relevant services, software and information systems, necessary for the provision of roaming services to customers.

3. Wholesale roaming access request shall be granted within a two month period from the receipt of the request by the network operator.

4. In order to ensure a consistent regulatory approach to the wholesale access for the provision of roaming services, BEREC in close co-operation with the Commission, shall lay down guidelines for wholesale access conditions for the purpose of providing roaming services.

Article 4

Separate sale of roaming services

1. Home providers shall enable their subscribers to access voice, SMS and data roaming services of any interconnected alternative roaming provider.
2. With effect from 1 July 2014, home providers shall inform all their roaming customers of the possibility to unsubscribe from their existing roaming services and to opt for roaming services from an alternative roaming provider. The roaming customers shall be given a period of two months within which to make their choice known to their home provider. Roaming customers who have not expressed their choice within that period shall have the right to opt for an alternative roaming provider at any moment, in line with paragraphs 3 and 4.
3. The customer's choice for an alternative roaming provider shall not entail any associated subscription or other fixed or recurring charges by the home provider and shall be possible with any retail tariff plan.
4. Any switch to or from an alternative roaming provider shall be free of charge and shall not entail conditions or restrictions pertaining to elements of the subscription other than roaming, and shall be carried out within five working days, save that where a roaming customer who has subscribed to a domestic package which includes roaming prices other than the Eurotariff, Euro-SMS tariff or Euro-data tariff, the home provider may delay the switch from the old to the new subscription concerning roaming services for a specified period not exceeding three months.
5. At the time of making or renewing a contract on mobile communication services, home providers shall provide all customers individually with full information on the possibility to choose an alternative roaming provider and facilitate the conclusion of a contract with an alternative roaming provider. Customers concluding a contract with the home provider for roaming services shall explicitly confirm that they have been informed of such possibility. The providers of mobile communications services shall not prevent retailers serving as their points of sale to offer contracts for separate roaming services with alternative roaming providers.
6. The home provider or the operator of a visited network shall not alter the technical characteristics of roaming services provided by an alternative roaming provider in such a way as to make them differ from the technical characteristics, including the quality parameters, of roaming services provided by the operator providing domestic mobile communications services.

Article 5

Facility for separate sale of roaming services

In order to ensure the development of the single market, implementation of the technical solutions for the facility of separate sale of roaming services shall take place simultaneously across the Union.

For the purpose of separate sale of roaming services, operators shall make sure that facilities are in place by 1 July 2014 at the latest, to ensure that the customer can use domestic mobile services and separate roaming services offered by an alternative roaming operator while keeping their mobile number. In order to enable the separate sale of roaming services, operators may in particular allow the use of a "EU roaming profile" on the same SIM card and the use of the same terminal alongside domestic mobile services. Pricing for interconnection related to the provision of this facility shall be cost-orientated and there should be no direct charges to consumers for the use of this facility.

BEREC, after consulting stakeholders and in close co-operation with the Commission, shall lay down within a reasonable period of time not exceeding three months after the adoption of this Regulation guidelines with regard to harmonised technical solutions relating to the facility for separate roaming services and to harmonised procedures to change the provider of roaming services. Upon a reasoned request from the BEREC, the Commission may extend that period.

If necessary, the Commission could give a mandate to a European Standardisation Body for the adaptation of the relevant standards that are necessary for the harmonised implementation of the facility.

Article 6

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 customer's home provider 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 0,14 per minute as of 1 July 2012.

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 charge as provided for in this paragraph or the expiry of this Regulation. The maximum average wholesale charge shall decrease to EUR 0,10 and EUR 0,06, on 1 July 2013 and on 1 July 2014 respectively. Without prejudice to Article 13, the maximum average wholesale charge shall remain at EUR 0,06 for the duration of this Regulation.

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 Union 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. 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 7

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 had chosen a specific roaming tariff or package of the conditions applicable to that tariff or package.

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 0,32 per minute for any call made or EUR 0,11 per minute for any call received as of 1 July 2012. The price ceiling for calls made shall decrease to EUR 0,28 and EUR 0,24 on 1 July 2013 and on 1 July 2014 respectively, and for calls received to EUR 0,10 on 1 July 2013. Without prejudice to Articles 13 and 19 these regulated maximum retail charges for the Eurotariff shall remain valid until 30 June 2016. 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. 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.

3. All existing roaming customers shall be given the opportunity 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.

Home providers shall apply a Eurotariff 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 calls than they would have been accorded in the absence of such a choice.

4. Home providers shall apply a Eurotariff to all new roaming customers who do not make a deliberate choice to select a different roaming tariff or a tariff package for roaming services which includes a different tariff for regulated roaming calls.

5. Any roaming customer may request 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 8

Wholesale charges for regulated roaming SMS messages

1. With effect from 1 July 2012, the average wholesale charge that the operator of a visited network may levy from the customer's home provider, for the provision of a regulated roaming SMS message originating on that visited network, shall not exceed EUR 0,03 per

SMS message. The maximum average wholesale charge for the provision of a regulated roaming SMS message shall decrease to EUR 0,02 on 1 July 2014. Without prejudice to Article 13 the regulated wholesale charge for the provision of regulated roaming SMS messages shall remain at EUR 0,02 for the duration of this Regulation.

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 Union 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 9

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 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 2012, 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 0,10. Without prejudice to Articles 13 and 19, the regulated maximum retail charge for the Euro-SMS tariff shall remain at EUR 0,10 until 30 June 2016.

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

4. 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. 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 Euro-tariff.

Article 10

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 11

Wholesale charges for regulated data roaming services

1. With effect from 1 July 2012 the average wholesale charge that the operator of a visited network may levy from the roaming customer's home provider for the provision of regulated data roaming services by means of that visited network shall not exceed a safeguard limit of EUR 0,30, EUR 0,20 as of 1 July 2013 and EUR 0,10 as of 1 July 2014 per megabyte of data transmitted. Without prejudice to Article 13 the maximum average wholesale charge for the provision of regulated data roaming services shall remain at EUR 0,10 per megabyte of data transmitted for the duration of this Regulation.

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 provider of roaming services 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.

Article 12

Retail charges for regulated data roaming services

1. Roaming providers shall make available to all their roaming customers, clearly and transparently, a Euro-data tariff as provided for in paragraph 2. This Euro-data tariff 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 2012, had chosen a specific roaming tariff or package of the conditions applicable to that tariff or package.

2. With effect from 1 July 2012, the retail charge (excluding VAT) of a Euro-data tariff which a home provider may levy from its roaming customer for the provision of a regulated roaming data shall not exceed EUR 0,90 per megabyte. The price ceiling for data used shall decrease to EUR 0,70 and EUR 0,50, per megabyte used on 1 July 2013 and on 1 July 2014

respectively. Without prejudice to Articles 13 and 19, the regulated maximum retail charge shall remain at EUR 0,50, per megabyte used until 30 June 2016.

Every roaming provider shall charge its roaming customers for the provision of any regulated roaming data service to which a Euro-data tariff applies on a per kilobyte basis.

3. From 1 July 2012 home providers shall apply a Euro-data tariff to all existing roaming customers automatically, with the exception of such roaming customers who have already made a choice of a specific roaming tariff or package by virtue of which they benefit from a different tariff for regulated data roaming services than they would have been accorded in the absence of such choice.

4. From 1 July 2012 home providers shall apply a Euro-data tariff to all new roaming customers who do not make a deliberate choice to select a different roaming data tariff or a tariff package for roaming services which includes a different tariff for regulated roaming data services.

5. Any roaming customer may request to switch to or from a Euro-data tariff respecting their contractual conditions at any point in 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-data tariff may always be combined with a Euro-SMS tariff and a Eurotariff.

6. No later than 30 June 2012, home providers shall inform all their roaming customers individually about the Euro-data tariff, that it will apply from 1 July 2012 at the latest to all roaming customers who have not made a deliberate choice of a special tariff or package applicable to regulated data services, and about their right to switch to and from it in accordance with paragraph 5.

Article 13

Conditions for advance non-application of maximum wholesale and retail charges

1. In order to assess the competitive development in the roaming markets BEREC shall collect regularly data on the development of retail and wholesale charges for voice, SMS and data roaming services. These data shall be notified to the Commission, at least twice a year. The Commission shall make them public.

2. If, after 30 June 2018, the average wholesale charge for one of the roaming services (voice, SMS or data) for unbalanced traffic between operators that do not belong to the same group falls to 75% or less of the maximum wholesale charges provided for in Articles 6(2), 8(1) and 11(1), the maximum wholesale charges for the roaming service concerned shall no longer apply. The Commission shall regularly verify, on the basis of the market data collected by BEREC, whether this condition is met and, if so, it shall publish without delay in the C series of the Official Journal of the European Union the data proving that the maximum wholesale charges no longer apply for the service concerned.

3. If, following the implementation of the separate sale of roaming services referred to in Article 5 and before 1 July 2016, the average retail charge at the Union level falls to 75% or less of the maximum retail charges provided for in Articles 7(2), 9(2) and 12(2), the maximum retail charges for that roaming services shall no longer apply. The Commission

shall regularly verify, on the basis of the market data collected by BEREC, whether this condition is met and, if so, it shall publish without delay in the C series of the Official Journal of the European Union the data proving that the maximum retail charges no longer apply for the service concerned.

4. The relevant maximum charges shall cease to apply as from the first day of the month following the publication of the data proving that the conditions of paragraphs 2 or 3 respectively are satisfied.

Article 14

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.

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.

On the occasion of each message, a customer shall have the opportunity to give notice to home 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 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 Union, 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. Obligations provided for in paragraph 1 shall not apply to machine to machine (M2M) type of devices that use mobile communication.

3. Home providers shall provide all users with full information on applicable roaming charges, in particular on the Eurotariff, the Euro-SMS tariff and the Euro-data 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, the Euro-SMS tariff and the Euro-data tariff. They shall in particular communicate to all roaming customers the conditions relating to the Eurotariff, the conditions relating to the Euro-SMS tariff and by 30 June 2012 the conditions relating to the Euro-data tariff as defined in Article 12, 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 15

Transparency and safeguard mechanisms for retail 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. The safeguard mechanisms referred to in paragraph 3 shall not apply to pre-paid customers.

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.

2. 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. 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. 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 services, unless and until the roaming customer requests the continued or renewed provision of those services. Whenever a roaming customer requests to opt for or to remove a 'financial or volume limit' facility, the change 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.

Article 16

Supervision and enforcement

1. National regulatory authorities shall monitor and supervise compliance with this Regulation within their territory.
2. National regulatory authorities shall make up-to-date information on the application of this Regulation, in particular Articles 6 to 9, 11 and 12, publicly available in a manner that enables interested parties to have easy access to it.

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 349 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.

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.

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 17

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.

Article 18

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 2012 and shall notify it without delay of any subsequent amendment affecting them.

Article 19

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 2015. The Commission shall 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 extent to which the structural solutions foreseen in Articles 3 and 4 have produced results in developing competition in the roaming market.

2. If the report shows that the structural measures provided for by the present Regulation are not sufficient to promote competition in the roaming market for the benefit of European consumers, the Commission shall make appropriate proposals to the European Parliament and the Council to address this situation. The Commission shall examine, in particular, whether it is necessary to modify the structural measures or to extend the duration of any of the maximum retail charges foreseen in Articles 7, 9 and 12.

3. In addition, the Commission shall, report to the European Parliament and the Council on the functioning of the Regulation every two years after the report foreseen in paragraph 1. The report, shall include a summary of the monitoring of the provision of roaming services in the Union and an assessment of the progress towards achieving the objectives of this Regulation, including by reference to the matters referred to in paragraph 1.

Article 20

Notification requirements

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

Article 21

Repeal

Regulation (EC) No 717/2007 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 II.

Article 22

Entry into force and expiry

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

It shall expire on 30 June 2022.

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

Done at [...]

For the European Parliament
The President

For the Council
The President

ANNEX I

Repealed Regulation with its amendment
(referred to in Article 22)

Regulation (EC) No 717/2007 of the European Parliament (OJ L 171, 29.6.2007, p. 32)
and of the Council

Regulation (EC) No 544/2009 of the European Parliament (OJ L 167, 29.6.2009, p. 12)
and of the Council

Unofficial

ANNEX II

CORRELATION TABLE

Regulation (EC) No 717/2007	This Regulation
Article 1	Article 1
Article 2(1)	Article 2(1)
Article 2(2), introductory words	Article 2(2), introductory words
Article 2(2), points (a) to (k)	Article 2(2), points (a) to (k)
-	Article 2(2), points (l) to (o)
-	Articles 3, 4 and 5
Article 3(1)	Article 6(1)
Article 3(2)	Article 6(2)
Article 3(3), first subparagraph	-
Article 3(3), second subparagraph	Article 6(3)
Article 4(1)	Article 7(1)
Article 4(2)	Article 7(2)
Article 4(3), first paragraph	-
Article 4(3), second paragraph	Article 7(3)
Article 4(4)	Article 7(4)
Article 4a	Article 8
Article 4b	Article 9
Article 4b(7)	-
Article 4c	Article 10
-	Article 11
-	Article 12
-	Article 13
Article 6	Article 14

Article 6a	Article 15
Article 6a(4)	-
Article 7	Article 16
Article 8	Article 17
Article 9	Article 18
Article 10	-
Article 11(1) introductory words	Article 19(1) introductory words
Article 11(1) first subparagraph first to fourth indent	Article 19(1) first subparagraph first to fourth indent
-	Article 19(1) fifth indent
Article 11(1) second subparagraph	-
Article 11(2)	Article 19(2)
Article 12	Article 20
-	Article 21
Article 13	Article 22