



**ASSEMBLY OF THE REPUBLIC**  
**EUROPEAN AFFAIRS COMMITTEE**

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**Written Opinion**

**COM(2016)398**

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL  
on the review of the wholesale roaming market

**COM(2016)399**

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
amending Regulation (EU) No 531/2012 as regards rules for wholesale roaming markets



## **ASSEMBLY OF THE REPUBLIC**

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#### **PART I - INTRODUCTION**

In accordance with Article 7 of Law No 43/2006 of 25 August 2006 on monitoring, examination and issuing of opinions by the Assembly of the Portuguese Republic in the context of the process of constructing the European Union, as amended by Law No 21/2012 of 17 May 2012, and in accordance with the Guidelines for the scrutiny of EU initiatives, as approved on 1 March 2016, the European Affairs Committee received the REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the review of the wholesale roaming market [COM(2016)398] and the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 531/2012 as regards rules for wholesale roaming markets [COM(2016)399].

In view of their subject matter, these initiatives were referred to the Committee on Culture, Communication, Youth and Sport, which examined them and approved the corresponding report. Under the new Guidelines for the scrutiny of EU initiatives, as approved by the European Affairs Committee, this Committee has drafted a technical note on the initiatives under examination, which will also be attached to this Opinion.

#### **PART II – RECITALS**

In the spirit of the Digital Single Market Strategy, the Proposal for a Regulation under consideration here (accompanied by the above-mentioned report) proposes to amend



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Regulation (EU) No 531/2012 for a second time<sup>1</sup>, with a view to eliminating the identified failings in the wholesale roaming market and thus regulating the functioning of national wholesale roaming markets in order to abolish retail roaming surcharges by 15 July 2017 in line with Regulation (EU) 2015/2120 as regards the retail market.

In this respect, it should be pointed out that the abolition of retail roaming surcharges as required by the above-mentioned Regulation, also known as '*roam-like-at-home*' (RLAH), is necessary to establish and ease the functioning of a digital single market across the Union. Consequently, in the light of its review of the wholesale roaming market, the European Commission considers that that Regulation is not sufficient to ensure the correct functioning of the roaming market, given that it has been established that the national wholesale roaming markets are not functioning properly and that this situation is unlikely to improve, even under the future RLAH retail obligation. In particular, it should be noted that the current functioning of wholesale roaming markets 'could affect competition and investments in home operators' domestic markets due to excessive wholesale roaming charges compared to the domestic retail prices applied to end-users. This applies in particular for smaller or net outbound operators, thus making RLAH structurally unsustainable.'

Against this background, the European Commission, in its Proposal for a Regulation, is proposing to establish a legal framework to regulate the functioning of national wholesale roaming markets in order to allow RLAH to be applied in 2017 while maintaining the sustainability of domestic charging models. It should also be noted that the 'affected parties will mainly be EU mobile network operators. The main beneficiaries will be all customers of EU mobile operators using mobile communications services while travelling in the EU'.

Lastly, it should be noted that, in view of their subject matter, these initiatives were referred to the Committee on Culture, Communication, Youth and Sport, which examined them and approved a detailed and thorough report on the content of the initiative. It is therefore necessary to reproduce it in full in order to avoid repetition of analysis and

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<sup>1</sup>It was amended for the first time by Regulation (EU) 2015/2120, which entered into force on 29 November 2015.



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consequent redundancy. The report has therefore been annexed to this Opinion and forms an integral part of it.

In the light of the provisions made in the Proposal, the following must be considered:

#### **a) *Legal basis***

The legal basis for this Proposal for a Regulation is Article 114 of the Treaty on the Functioning of the European Union (TFEU), paragraph 1 of which provides for the adoption of ‘measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.’

#### **b) *Principle of subsidiarity***

In view of the fact that the technical note drawn up by the European Affairs Committee does not refer to the assessment of the application of the subsidiarity principle, the rapporteur’s assessment is as follows:

The Proposal for a Regulation is intended to ensure the common and consistent application of legislative measures to ensure and regulate the proper functioning of the wholesale roaming markets and thus enable RLAH to be implemented sustainably throughout the Union. The stated objectives would not be sufficiently achieved at the level of the individual Member States as national measures do not ensure that the rules on national wholesale markets are compatible with the EU rules on retail roaming services. Instead, the cross-border effects of national wholesale roaming markets on the provision of retail roaming services within the EU mean that the objectives can be better achieved at EU level. EU action is therefore deemed to be in conformity with the subsidiarity principle, as set out in Article 5 of the Treaty on European Union.



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**PART III – OPINION**

In the light of the information set out above and the report of the relevant committee, the European Affairs Committee's opinion is as follows:

1. This initiative upholds the principle of subsidiarity, insofar as the objective will be achieved more effectively by means of action at European Union level.
2. This concludes the scrutiny of this initiative. However, given the importance of the matter at hand, the European Affairs Committee will continue to monitor the legislative process for this initiative, in particular by means of an exchange of information with the Government.

Palácio de São Bento, 12 September 2016

**Rapporteur**  
***[Signed]***  
**(António Cardoso)**

**Chair of the Committee**  
***[Signed]***  
**(Regina Bastos)**





**ASSEMBLY OF THE REPUBLIC**  
Committee on Culture, Communication, Youth and Sport

Report from the Committee on Culture, Communication,  
Youth and Sport

**Rapporteur:** Mr Pedro Pimpão, Member of the Assembly

COM (2016) 398 and COM (2016) 399

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COM (2016) 398 – REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND  
THE COUNCIL

on the review of the wholesale roaming market

COM (2016) 399 – Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE  
COUNCIL amending Regulation (EU) No 531/2012 as regards rules for wholesale roaming markets



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Committee on Culture, Communication, Youth and Sport

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**PART I - INTRODUCTION**

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Committee on Culture, Communication, Youth and Sport

**PART I - INTRODUCTION**

In accordance with Article 7(1), (2) and (3) of Law No 43/2006 of 25 August 2006 on monitoring, examination and issuing of opinions by the Assembly of the Portuguese Republic in the context of the process of constructing the European Union, as amended by Law No 21/2012 of 17 May 2012, the Report from the Commission to the European Parliament and the Council on the review of the wholesale roaming market [COM (2016) 398] and the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 531/2012 as regards rules for wholesale roaming [COM (2016) 399] were referred to this Committee on 8 June 2016, in view of their subject matter, for examination and preparation of this report.

**PART II - RECITALS**

EU regulatory intervention on wholesale and retail roaming markets has been necessary for the last 10 years in order to improve the conditions for the functioning of the internal market for roaming services within the Union.

Since 2006, the Commission has taken action to address the high roaming charges paid by consumers for using their mobile phones when travelling abroad in another EU Member State.

The elimination of roaming surcharges was reaffirmed as a general policy objective in the Commission's Digital Single Market Strategy, which includes it as an important element for creating the right conditions for digital networks and services to flourish.



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In 2015, the European Parliament and the Council adopted Regulation (EU) 2015/2120, which entered into force on 29 November 2015.

Regulation (EU) 2015/2120 requires retail roaming surcharges to be abolished in the Union from 15 June 2017, subject to fair usage of roaming services and allowing for the possibility for operators to apply for a derogation in exceptional cases where a roaming provider is not able to recover the overall actual and projected costs of providing regulated roaming services from its overall actual and projected revenues from the provision of such services.

This new regulatory regime for retail roaming services in the Union is referred to as the 'roam-like-at-home' (RLAH) regime in this report. However, Regulation (EU) 2015/2120 did not provide for measures on the wholesale roaming market, because additional investigation of market conditions was necessary.

In this regard, the Commission undertook a review of the wholesale roaming market, with a view to assessing the measures necessary to enable the abolition of retail roaming surcharges, in accordance with Article 19(1) of the Roaming Regulation.

In the light of the results of the review of the wholesale roaming market, **the Commission submitted a report to the European Parliament and to the Council on the review of the wholesale roaming market – COM (2016) 398.**

The report on the review of the wholesale roaming market notes that further regulation at Union level is necessary to deliver wholesale roaming charges lower than the ones in place and closer to the underlying costs, which would enable RLAH to be delivered in 2017, while maintaining the sustainability of domestic charging models.

The public consultation showed that almost all operators agree that setting price caps at Union level, applicable in all Member States, is the most appropriate approach to



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continue regulating wholesale roaming markets in the RLAH context.

It should be noted, however, that operators are divided as to the level at which these caps should be set to enable a sustainable RLAH regime.

National regulatory authorities and governments express views similar to those of the operators in their countries. Large inbound roaming countries consider that national wholesale roaming markets function well, while large outbound roaming countries take the opposite view. Finally, consumers and consumer associations are cautious in expressing views on wholesale roaming markets since they are not directly involved in these markets.

In its report on the review of the wholesale roaming market, the Commission concludes that there is scope for further reducing wholesale roaming charge caps from the current level, in particular for data services, while keeping the caps above underlying costs in all countries.

The report is accompanied by a legislative proposal to amend the Roaming Regulation: **Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 531/2012 as regards rules for wholesale roaming markets – COM (2016) 399**

The Proposal for a Regulation of the European Parliament and of the Council is intended to complete the rules on roaming, in particular with regard to wholesale roaming markets, and to enable the application of RLAH rules from 15 June 2017.

This is in line with the policy objectives underpinning the Roaming Regulation and the wider Digital Single Market Strategy.



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The RLAH regime will become mandatory from June 2017, subject to the applicability on that date of the legislative act to be adopted following the present proposal.

The proposed Regulation consists of two articles:

- ✓ Article 1 includes all the proposed amendments to the Roaming Regulation;
- ✓ Article 2 relates to the entry into force of the Regulation.

The proposal does not have budgetary implications for the EU.

**Principle of subsidiarity**

An initiative at Union level would better take into account the general interest of all Member States. Failure to ensure consistent regulation of wholesale roaming markets at Union level could make it more difficult to provide RLAH, in view of the increased risk of inconsistencies between the wholesale costs incurred in other Member States and the retail revenues. Throughout this process it is important to ensure that there is no detrimental effect on the final consumer.

**Principle of proportionality**

In accordance with the principle of proportionality, the wholesale roaming rules only do what is necessary to achieve the general policy objective. They must not, for example, create negative economic consequences which are not justified in achieving the objective, such as requiring efficient operators to provide services below cost or imposing access rules which visited operators cannot limit to the provision of roaming services.

**PART III - CONCLUSIONS**

In view of the above, the Committee on Culture, Communication, Youth and Sport concludes as follows:



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1. The initiatives comply with the principles of subsidiarity and proportionality.
2. In view of the subject matter concerned, it is proposed to monitor these initiatives.
3. The Committee on Culture, Communication, Youth and Sport hereby concludes its examination of this initiative. Pursuant to Law No 43/2006 of 25 August 2006, as amended by Law No 21/2012 of 17 May 2012, this report must be forwarded to the European Affairs Committee for the appropriate purposes.

Palácio de São Bento, 15 July 2016

**Rapporteur**  
***[Signed]***  
**(Pedro Pimpão)**

**Chair of the Committee**  
***[Signed]***  
**(Edite Estrela)**



**COM(2016)398**

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL  
on the review of the wholesale roaming market**

Date of arrival at the European Affairs Committee: 22.6.2016

**COM(2016)399**

**Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
amending Regulation (EU) No 531/2012 as regards rules for wholesale roaming markets**

Date of arrival at the European Affairs Committee: 22.6.2016

Deadline: 19.9.2016

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- II. Legal framework
- III. Background
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- V. Position adopted by the Government (if available)
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**Drawn up by:** The European Affairs Committee support team, in conjunction with the Permanent Representative of the Portuguese Parliament to the European Union.

**Date:** 18 July 2016

## I. Aim of the initiatives

The Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 531/2012 as regards rules for wholesale roaming markets [COM(2016)398] proposes amendments to (Articles 3(4), 7(1) and (2), 9(1), 12(1), 17(1) and 19 of) Regulation (EU) No 531/2012, which establishes measures concerning open internet access, and accompanies the Report from the Commission to the European Parliament and the Council on the review of the wholesale roaming market [COM(2016)399], setting out the results of the European Commission's review of the wholesale roaming markets, including the measures necessary to enable the abolition of retail roaming surcharges by 15 June 2017.

A summary is given below of the main conclusions of the European Commission's report on the review of the wholesale roaming market, which form the background to the Proposal for a Regulation:

- a) While necessary, regulation at retail level alone is not sufficient to implement the RLAH regime by 15 June 2017, as required by Regulation (EU) 2015/2120. RLAH has very rarely been delivered in the Union under the current conditions in the wholesale roaming markets.
- b) There is scope for further reducing wholesale roaming charge caps from the current level, in particular for data services, while keeping the caps above underlying costs in all countries.
- c) Enabling RLAH in the Union in 2017, while maintaining the sustainability of domestic charging models for all or virtually all operators, requires further regulation of wholesale roaming markets so that they deliver lower charges than today.

For the abolition of those surcharges to be sustainable throughout the Union and not to distort domestic visited and home markets, the national wholesale roaming markets need to be more competitive.

To this end, the aim of the initiatives is to make it possible, by 17 June 2017, to deliver wholesale roaming prices that enable operators to sustainably offer retail roaming services without any additional charges.

## II. Legal framework

The legal basis cited for adopting the initiative to regulate the wholesale roaming markets [COM(2016)398] is Article 114 of the Treaty on the Functioning of the European Union (TFEU), paragraph 1 of which provides for the adoption, by the co-legislators, acting in accordance with the ordinary legislative procedure, of 'measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and **functioning of the internal market**' (our underlining).

That article should be read in conjunction with Articles 26 and 27 (internal market) and Article 4(2)(a) (shared competence) TFEU.



In fact, this initiative falls under one of the priorities set out by the Juncker Commission in 2014, namely 'a connected **digital single market**', which is based on the concept of the internal market (as an area without borders within which the free movement of goods, persons, services and capital is ensured), with a view to abolishing barriers to trade between the various Member States.

In 2015, the Commission approved a **Digital Single Market (DSM) Strategy**, which is based on a three-pillar approach:

- (1) better access for consumers and businesses to digital goods and services across Europe;
- (2) creating the right conditions and a level playing field for digital networks and innovative services to flourish;
- (3) maximising the growth potential of the digital economy.

To put those pillars in place, the European Commission, in its communication *A Digital Market Strategy for Europe* [COM(2015)192], drew up a roadmap of 16 main actions to be launched by the end of 2016. This was **scrutinised by the Assembly of the Portuguese Republic** in the European Affairs Committee's report of 22 July 2015, which included a report by the Committee on Education, Science and Culture.

**For more detailed background information, see the following information available online:**

Fact sheet: [http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuld=FTU\\_5.9.4.html](http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuld=FTU_5.9.4.html)

Fact sheet: [http://ec.europa.eu/priorities/sites/beta-political/files/dsm-factsheet\\_en.pdf](http://ec.europa.eu/priorities/sites/beta-political/files/dsm-factsheet_en.pdf)

Digital Single Market Strategy: <http://www.consilium.europa.eu/en/policies/digital-single-market-strategy/>

**III. Background**

**COM(2015)192** – COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS A Digital Single Market Strategy for Europe.

**IV. European initiatives on related subjects**

**COM(2013)634** – COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on the Telecommunications Single Market.

**COM(2016)43** – Proposal for a DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the use of the 470-790 MHz frequency band in the Union.

**V. Position adopted by the Government (if available)**

Not available

**VI. Position adopted by other Member States – IPEX**

<b>COM(2016)398</b>				
Country		Scrutiny date	Stage of scrutiny process	Documents/observations
Germany	<u>German Bundestag</u>	8.7.2016	Ongoing	<b>Committee responsible:</b> Committee on Economic Affairs and Energy <b>Committees asked for an opinion:</b> Committee on Legal Affairs and Consumer Protection Committee on Transport and Digital Infrastructure
Luxembourg	<u>Luxembourg Chamber of Deputies</u>	20.6.2016	Ongoing	
Sweden	<u>Swedish Parliament</u>	15.6.2016	Ongoing	Passed on to the Committee on Transport and Communications.

COM(2016)399				
Country		Scrutiny date	Stage of scrutiny process	Documents/observations
Germany	<u>German Bundestag</u>	8.7.2016	Ongoing	<b>Committee responsible:</b> Committee on Economic Affairs and Energy <b>Committees asked for an opinion:</b> Committee on the Affairs of the European Union Committee on Legal Affairs and Consumer Protection Committee on Transport and Digital Infrastructure
	<u>Bundesrat</u>	15.6.2016	Ongoing	<b>Documents</b>
Austria	<u>Austrian Federal Council</u>	29.6.2016	Completed	The proposal was discussed at the committee session on 29 June 2016. No decision was adopted.
Slovakia	<u>National Council of the Slovak Republic</u>	27.6.2016		<b><u>NC SR's scrutiny information web page</u></b>
Finland	<u>Finnish Parliament</u>		Ongoing	<b><u>Eduskunta dossier TS 35/2016 (in Finnish)</u></b>
Greece	<u>Hellenic Parliament</u>	23.6.2016	Ongoing	
Sweden	<u>Swedish Parliament</u>	23.6.2016	Ongoing	Referred to the Committee on Transport and Communications. The Committee will examine whether the draft is in compliance with the principle of subsidiarity. The Committee will report on its findings to the Chamber.

