



Brussels, 12 March 2018

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF ELECTRONIC COMMUNICATIONS

The United Kingdom submitted on 29 March 2017 the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. This means that, unless a ratified withdrawal agreement¹ establishes another date, all Union primary and secondary law will cease to apply to the United Kingdom from 30 March 2019, 00:00h (CET) ('the withdrawal date').² The United Kingdom will then become a 'third country'.³

Preparing for the withdrawal is not just a matter for EU and national authorities but also for private parties.

In view of the considerable uncertainties, in particular concerning the content of a possible withdrawal agreement, stakeholders are reminded of legal repercussions, which need to be considered when the United Kingdom becomes a third country.

Subject to any transitional arrangement that may be contained in a possible withdrawal agreement, as of the withdrawal date, the EU rules in the field of electronic communications no longer apply to the United Kingdom. This regulatory framework includes⁴ the provisions of the Framework Directive,⁵ the related Specific Directives,⁶ the

¹ Negotiations are ongoing with the United Kingdom with a view to reaching a withdrawal agreement.

² Furthermore, in accordance with Article 50(3) of the Treaty on European Union, the European Council, in agreement with the United Kingdom, may unanimously decide that the Treaties cease to apply at a later date.

³ A third country is a country not member of the EU.

⁴ Please note that this list is indicative of the provisions primarily covered by this Notice. It is intended for information purposes only and is therefore neither exhaustive nor binding.

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), OJ L 108, 24.4.2002, p. 33.

⁶ Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 (Authorisation Directive), OJ L 108, 24.2.2002, p. 21; Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 (Access Directive), OJ L 108, 24.2.2002, p.7; Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 (Universal Service Directive), L 108, 24.2.2002, p. 51; and Directive 2002/58/EC of the European Parliament and of the Council of 12 July

Radio Spectrum Decision,⁷ the BEREC Regulation,⁸ the Roaming Regulation,⁹ the Telecoms Single Market Regulation,¹⁰ as well as a number of Commission Recommendations on related matters concerning the identification of markets which are susceptible to regulatory intervention¹¹ and the proposed methodology for setting termination rates for voice calls.¹²

This has in particular the following consequences in the different areas of electronic communications:

1. GENERAL AUTHORISATION

Providers established in at least one EU Member State enjoy the right to provide electronic communications networks and services in all other Member States without being required to have an establishment there. They can start providing networks and services without any formal licensing process and are subject only to a "general authorisation" in each Member State where they provide networks or services (Article 3 of the Authorisation Directive). The general authorisation comprises rights and obligations for the provision of electronic communications networks and services and Member States may only request a simple notification, without any standstill obligation (Article 4 of the Authorisation Directive).

As of the withdrawal date, providers of electronic communications networks and/or services established in the United Kingdom will cease to benefit from the general authorisation regime within the EU-27 Member States. Hence, EU-27 Member States may impose additional authorisation requirements on providers established in the United Kingdom. Furthermore, providers established in the United Kingdom will cease to have the right to request providers authorised in the EU-27 Member States which are not 'major suppliers' (within the meaning of the GATS Reference Paper on

2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), OJ L 201, 31.7.2002, p. 37.

⁷ Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision), OJ L 108, 24.4.2002, p. 1.

⁸ Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office, OJ L 337, 18.12.2009, p. 1.

⁹ Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union, OJ L 172, 30.6.2012, p. 10.

¹⁰ Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access, OJ L 310, 26.11.2015, p. 1.

¹¹ Commission Recommendation 2014/710/EU of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (Recommendation on Relevant Markets), OJ L 295, 11.10.2014, p. 79.

¹² Commission Recommendation 2009/396/EC of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU, (Recommendation on Termination Rates), OJ L 124 20.5.2009, p. 67.

Telecommunications Services) to negotiate access and interconnection. Moreover, they will not have the right to request or be subject to the dispute resolution procedure within the EU, neither for disputes within a Member State nor for cross-border access disputes.

2. FIXED AND MOBILE TERMINATION RATES

As of the withdrawal date, the EU's regulatory framework leading to low wholesale voice termination rates¹³ will no longer apply to EU service providers as regards calls between the EU and the United Kingdom. This may lead to increases in the wholesale termination rates for calls from the EU to the United Kingdom and ultimately to increased retail tariffs for such calls.

3. ROAMING

As of the withdrawal date the United Kingdom becomes a third country for the purposes of EU rules on roaming (Regulation (EU) 531/2012).

Providers of roaming services to roaming customers (hereafter 'roaming providers') operating in the EU:

- will no longer benefit, when requesting wholesale roaming access, from the obligation of mobile network operators operating in the United Kingdom to meet all reasonable requests for providing wholesale roaming access (Article 3 of Regulation (EU) 531/2012);
- will no longer benefit from the EU rules on maximum wholesale roaming charges that visited network operators operating in the United Kingdom may charge for the provision of wholesale roaming services within the EU (Articles 7, 9, 12 of Regulation (EU) 531/2012).

Roaming customers of roaming providers operating in the EU:

- will no longer benefit from the retail obligation of their roaming provider not to levy any surcharge in addition to the domestic retail price on them for the use in the United Kingdom of roaming services (calls made or received, SMS messages sent and data services), subject to fair use (Article 6a of Regulation (EU) 531/2012); but
- will continue to benefit from the transparency obligations laid down in Article 14 of Regulation (EU) 531/2012 (voice and SMS) and Article 15 of Regulation (EU) 531/2012 (data services) when travelling to the United Kingdom.

Roaming providers operating in the United Kingdom:

¹³ Wholesale termination rates are the charges paid between operators to deliver the calls to their customers. Wholesale termination rates are addressed in a Commission Recommendation of 2009, which recommends a costing methodology for setting regulated termination rates (Commission Recommendation 2009/396/EC of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU, OJ L 124, 20.5.2009, p. 67). Despite the non-binding nature of the Commission Recommendation of 2009, it is followed by most Member States and the Court of Justice has confirmed that a national competent authority may depart from a recommended approach only where it appears to the national competent authority, in its assessment of a given situation, that the recommended approach is not appropriate to the specific national circumstances and has to give a reasoned justification for its position. See the judgment in Case C-28/15, paragraph 38.

- will no longer benefit, when requesting wholesale roaming access, from the obligation of mobile network operators operating in the EU to meet all reasonable requests for providing wholesale roaming access (Article 3 of Regulation (EU) 531/2012);
- will no longer benefit from the EU rules on maximum wholesale roaming charges that visited network operators operating in the EU may charge for the provision of wholesale roaming services within the EU (Articles 7, 9, 12 of Regulation (EU) 531/2012).

Roaming customers of roaming providers operating in the United Kingdom:

- will no longer benefit from the EU rules on the retail obligation of their roaming provider not to levy any surcharge in addition to the domestic retail price on them for the use within the EU of roaming services (calls made or received, SMS messages sent and data services), subject to fair use (Article 6a of Regulation (EU) 531/2012); and
- will no longer benefit from the EU rules on the transparency obligations laid down in Article 14 of Regulation (EU) 531/2012 (voice and SMS) and Article 15 of Regulation (EU) 531/2012 (data services) when travelling to the EU.

The website of the Commission on the Digital Single Market provides general information concerning the Commission proposal for a Directive establishing a European Electronic Communications Code (<https://ec.europa.eu/digital-single-market/en/news/proposed-directive-establishing-european-electronic-communications-code>) and roaming (<https://ec.europa.eu/digital-single-market/en/roaming>).

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