



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
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Opinion

Title

DG CNECT – Impact assessment on fair use policy and on the sustainability mechanism for roaming

(version of 13 June 2016)*

(A) Context

The co-legislators have agreed on ending retail roaming surcharges for periodic travels in the EU as of 15 June 2017. In order to enable operators to prevent distortions on the domestic markets due to an abusive use of roaming services at domestic prices, the roam-like-at-home (RLAH) rules include the possibility for an operator to apply a fair use policy (FUP) to the consumption of roaming services at domestic prices.

Besides, in specific and exceptional circumstances, in order to avoid an increase in domestic prices ("waterbed effect"), the Roaming Regulation includes the possibility for an operator to derogate from RLAH, subject to ex-ante authorisation by the national regulatory authority (NRA) (sustainability mechanism).

The Roaming Regulation defines the criteria applicable to FUP and to the sustainability mechanism only in broad terms, and requests the Commission to lay down, by way of implementing acts, detailed rules on their respective applications. This IA seeks to determine the best options for laying down those two sets of rules.

(B) Overall opinion: POSITIVE

The Board gives a positive opinion, with a recommendation to further improve the report in the following key aspects:

(1) The context of the fair use policy (FUP) and the sustainability mechanisms as set out in the Roaming Regulation should be elaborated in order to clarify the scope of this initiative. Against this background, the proportionality of the policy intervention should be made clearer, in particular by setting out the scale of the problems (risks of unfair use and operators' unsustainability) to be addressed and demonstrating that the measures do not offset the benefits of the overall Roaming Regulation for the consumer.

(2) The report should clarify that the baseline merely serves as reference scenario for the impact analysis but is not a valid policy option.

(3) The report should clarify the origin and the underlying logic of the policy objectives and of the policy options.

(4) The impacts of the policy options on consumers, on the operators and on the different Member States should be elaborated and assessed when possible.

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

The lead DG shall ensure that these recommendations are duly taken into account in the report prior to launching the inter-service consultation.

(C) Main recommendations for improvements

(1) Context and problem: There should be an elaboration of the context of the FUP and the Sustainability policy as set out in the Roaming Regulation. This should also mention the scale of the problem by giving indications on the likelihood of unfair use by consumers or unsustainability for the operators and should explain how these provisions fit in the overall regulation. The report should demonstrate the proportionality of the mechanisms towards the development of the single market and the wholesale of roaming throughout the EU and explain how the policy options are expected to affect roaming competition and the overall consumer benefits stemming from the Roaming Regulation.

(2) Baseline: The report should stress that there is a legal obligation for the Commission to act and unless there are strong and substantiated reasons for not doing so, it should clarify that the baseline has been discarded as a viable policy option and merely serves as reference scenario for the impact analysis.

(3) Objectives and policy options: The report should fully explain the underlying logic and the origin of the set objectives and the proposed policy options (including their main parameters). For the policy objectives, it should reinforce the link with the identified problems and explain on what basis the objectives of "transparency" and "digital single market" were selected (i.e. make the link with the problem analysis and explain whether there are requirements in the Roaming Regulation and/or requests from stakeholders for pursuing these objectives). For the policy options, the report should explain how they were defined, especially with regard to the chosen parameters (e.g. for FUP, the choice of the assessed roaming periods or, for sustainability, the choice of periods for data submission)

(4) Impacts: The report should clarify how the policy options are expected to impact the various stakeholders, in particular the consumers and the Member States. With regard to the operators, the impact analysis should show whether different impacts are expected for bigger and smaller market players, and virtual mobile operators in particular. It should also comment on the administrative cost of monitoring the different FUP options for operators and regulators. The effectiveness of some of the options should be clarified (e.g. on what basis a 5% sustainability ratio is expected to avoid waterbed effects).

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated into the final version of the impact assessment report.

(D) Procedure and presentation

The report should be scrutinised for inconsistencies in format, fonts, errors in gaps and headings, explanation of acronyms (e.g. no explanation of BEREC), references to table of content, other sections, annexes etc. In addition the report should be revised in line with the better regulation guidelines so that the content of the report follows the structure of the sections. The main part of the report should include the relevant references to data in the annexes and present itself the main data.

(E) RSB scrutiny process

Reference number	2016/CNECT/011
External expertise used	No
Date of RSB meeting	05 July 2016