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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

COMMISSION IMPLEMENTING REGULATION

laying down detailed rules on the application of fair use policy and on the methodology for assessing the sustainability of the abolition of retail roaming surcharges and on the application to be submitted by a roaming provider for the purposes of that assessment

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Executive Summary Sheet

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

A. Need for action

Why? What is the problem being addressed?

The co-legislators agreed on ending retail roaming surcharges for periodic travels in the EU as of 15 June 2017 (RLAH¹ rules imposed by Regulation 531/2012 as amended by Regulation 2015/2120, hereinafter "the Roaming Regulation"), provided that the appropriate reform of the wholesale roaming market in the EU is applicable by that date. In order to enable operators to prevent distortions on the domestic markets due to an abusive use of roaming services at domestic prices, the 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 (s.c. 'waterbed effect') where the domestic charging model of an operator is not sustainable under RLAH, 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 respectively, while complying with the general criteria set out in the Roaming Regulation on these two topics.

What is this initiative expected to achieve?

The initiative aims at proposing appropriate rules on the application of FUP and on the methodology to assess the sustainability of the domestic charging model under RLAH. Operators will have to abide by the rules set out in this implementing act when designing any FUP on the consumption of roaming services at domestic prices. An operator will have to follow the methodology set out in this implementing act when filing an application for a sustainability derogation to its NRA, and the NRA will have to follow this methodology when assessing such an application in order to decide whether or not to grant the sustainability derogation to that operator. In assessing the possible rules to be set out in this implementing act, the Commission has taken into account the need to ensure that: (i) an operator is able, by applying a FUP, to effectively prevent abusive or anomalous usage of roaming services such as permanent roaming, (ii) the end user, when a FUP is applied, is able to consume volumes of roaming services at domestic prices that are consistent with his/her tariff plan, (iii) with the defined sustainability mechanism, there is no appreciable effect of RLAH on the evolution of domestic prices.

What is the value added of action at the EU level?

EU action is justified by the mandate addressed to the Commission in the Roaming Regulation to lay down detailed rules on the fair use policy that may be applied by operators and on the sustainability mechanism, in order to ensure the consistent application of these provisions across the Union. If these detailed rules are not adopted, the general rules laid down in the Roaming Regulation on fair use and the sustainability mechanism will still be applicable. However the applicable framework would be incomplete and would lead to widely diverging practices of operators and NRAs across the Union that may jeopardise the RLAH objective of the Roaming Regulation.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

Regarding the detailed rules on FUP, four options are considered:

Option 1 - no action at Union level (baseline scenario): no detailed EU rules on FUP are adopted; due to widely diverging and possibly restrictive FUPs applied by operators, RLAH would not be a reality for many EU residents from June 2017.

Option 2 - EU FUP defined as a time limit of 12 days per year: FUPs designed on that basis would not cover the needs of about half of EU residents travelling abroad in the EU.

Option 3 - list of banned practices in applying any FUP: The analysis shows that this option best fulfils the policy objectives: enabling to prevent permanent roaming while covering virtually all users' roaming needs.

Option 4 - EU FUP defined as a combination of time and volume limits: This option would not cover the roaming needs of a non-negligible part of EU residents travelling abroad in the EU.

Regarding the detailed rules on the sustainability mechanism, two options are considered:

Option 1 - no action at Union level (baseline scenario): no detailed EU rules on the sustainability mechanism are adopted; NRAs have diverging approaches in granting sustainability derogations to operators, leading to a fragmentation of RLAH in the Union and unequal treatment of EU residents across Member States.

¹ Roam Like at Home

<p>Option 2 - harmonisation of the sustainability assessment at EU level: in this option, the methodology is fully harmonised so that operators and NRAs follow a common approach, ensuring that the conditions under which a sustainability derogation may be granted are the same throughout the Union.</p>
<p>Who supports which option?</p> <p>In the public consultation, operators support a restrictive approach to FUP which they consider should be used to limit their exposure to the costs of RLAH, while users support the most generous FUP possible. On the sustainability mechanism, a widespread view among respondents (mostly operators in that case) is that this mechanism should not be overly complex. Operators have provided detailed feedback on the different steps the methodology should comprise.</p>

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise main ones)?

FUP's Option 3 (list of banned practices in applying any FUP) *sets maximal temporal restrictions at 90 days cumulatively (3 months) per year and 30 consecutive days abroad, with no volume limit on fixed-volume domestic bundles.* The analysis shows that this enables virtually all EU residents travelling abroad in the Union to benefit from RLAH. The same-day log-on exclusion from FUP also included in this option ensures that cross-border workers are also fully covered as long as they cross the border back and forth in the same day. EU residents moving temporarily to another Member State for longer periods may not be entirely covered as they may not be considered periodically travelling in the Union. The analysis also shows that the temporal criteria set out in this option makes permanent roaming via arbitrage highly complex and costly enough to be deterring, so that operators are enabled to effectively prevent such practices via FUP.

Option 2 of the sustainability mechanism makes explicit the details of the mechanism and addresses all open issues, so that all steps of the methodology are harmonised. This ensures widespread application of RLAH across the Union, limiting the potential cases of a waterbed effect, and ensuring a level playing field among operators in the Union.

What are the costs of the preferred option (if any, otherwise main ones)?

The preferred options do not create additional administrative or technical costs on operators and NRAs compared to those implied by the Roaming Regulation. Applying a FUP is not an obligation imposed on operators but a possibility they may make use of if they deem necessary. As such, the Roaming Regulation and this implementing act do not impose any costs on operators regarding FUP. Similarly, applying for a sustainability derogation is a decision of the operator. That decision necessarily takes into account the costs of the application process itself as well as the possible consequences of such a decision on the competitive situation of the operator on the market.

However, for FUP and the sustainability mechanism to be, in effect, possibilities which an operator may avail themselves in practice, their respective implementation costs should be proportionate and reasonable; implementation costs have therefore been considered by the Commission when assessing the different options. The simplicity and transparency of FUP's preferred option should facilitate monitoring and enforcement by NRAs of operators' compliance with those rules. The detailed description of the sustainability methodology in the preferred option should facilitate the sustainability assessment process by the NRA.

How will businesses, SMEs and micro-enterprises be affected?

Smaller mobile network operators and mobile virtual network operators: positive impact is expected for those of them which are in the specific and exceptional circumstances of applying for a sustainability derogation as the methodology would be fully defined.

Online businesses and start-ups: significant positive impact; with FUP enabling virtually all users to benefit from RLAH, usage of their services while roaming in the EU will grow, which means more opportunities for them to provide services to consumers when they travel in the EU. The initiative will promote cross-border use of connected devices/services/mobile apps, favouring innovation.

SMEs: significant positive impact for those having employees travelling in the EU for business (reduced bills).

Will there be significant impacts on national budgets and administrations?

This initiative as such will not impact on national public administrations. National regulatory authorities will monitor and supervise compliance with the Roaming Regulation.

Will there be other significant impacts?

No significant impact expected on third countries, international trade or investment.

D. Follow up

When will the policy be reviewed?

The EC is required to report every 2 years as from June 2018. The Roaming Regulation mandates:

- National Regulatory Authorities to monitor and supervise compliance with this Regulation
- BEREC to collect data from NRAs on retail and wholesale charges development (notified to the EC twice a year) and to report on the evolution of wholesale prices.

