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NOTE

from: Presidency
to: Delegations

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Subject: Proposal for a Regulation of the European Parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No 1211/2009 and (EU) No 531/2012
- Examination of the Presidency text on roaming

In the Working Party meeting of 3 February, the Presidency intends to engage in an article by article discussion of the text in the Annex.

The text is based on the general principles as set out in the Presidency roadmap (5071/15) discussed in the Working Party of 13 January. Taking into account the results of this discussion, namely that Option B is the preferred solution for the practical implementation of the RLAH+ proposal and that a basic roaming allowance should be included, the Presidency has developed a legislative text on roaming set out in the Annex.

Regarding the basic roaming allowance proposal:

- The Presidency would like to reiterate that the basic roaming allowance should be defined in a simple and transparent manner. Moreover, the aim of the allowance should not be to replicate domestic consumption pattern or to avoid abnormal usage.
- The Presidency would also like to emphasize that the decision on reducing the excessive roaming charges across the EU, as well as ensuring a basic roaming allowance for European consumers primarily needs to be a political one, however based on the available data.
- As a starting point for discussion and as indicated in square brackets in the Annex, the Presidency proposes that the basic roaming allowance is available at minimum for a certain (not necessarily consecutive) number of days [a] per year, and includes a minimum daily consumption of [b] minutes of regulated voice calls made, all calls received, [c] regulated SMS sent and [d] megabytes of regulated data roaming services. Subject to further discussion and purely to exemplify the difference between the basic allowance and the previously discussed fair use criteria, the number of days could be 7, the minimum daily consumption of voice calls made could be 5 minutes, there could be 5 regulated SMS sent and 5 megabytes of regulated data roaming services.
- The values proposed for discussion would in a simple and transparent manner provide basic and essential mobile phone usage for consumers when travelling, broadly based on the data provided by BEREC regarding the average number of days European consumers spend abroad per year, the daily average domestic retail consumption and the probable impact on roaming providers.

The volume of incoming calls would not be limited, however roaming providers would be able to implement usage policies necessary to prevent anomalous or abusive usage of calls received. In this respect, and also in relation to incoming calls within the surcharge regime, the Presidency will propose to introduce a recital which refers to the existing divergences between Member States in this respect and calls on the Commission to exercise its powers under Article 19(3) of the Framework Directive to address this outstanding problem whose consequences reach beyond roaming calls when reviewing the Recommendation on the regulatory treatment of fixed and mobile termination rates in the EU (2009/396/EC).

Article [37] – Amendments to Regulation (EU) No 531/2012

(1) In Article 4, paragraph 1, the first subparagraph is deleted.

(2) Articles 8, 10 and 13 are deleted and replaced as follows:

Article 6a

Retail roaming charges

- 1. Roaming providers shall include in all tariff plans a basic roaming allowance referred to in Article 6b(1). For consumption within the basic allowance, roaming providers may not levy any surcharge in comparison to the charges for mobile communications services at domestic level on roaming customers in any Member States for any regulated roaming call made or received, for any regulated roaming SMS/MMS message sent and for any regulated data roaming services used, nor any general charge to enable the terminal equipment or service to be used abroad.*
- 2. Roaming providers may apply a surcharge for the consumption of regulated roaming in excess of the basic roaming allowance. The surcharge applied for regulated roaming calls made, regulated roaming SMS and regulated data roaming services shall not exceed the maximum wholesale charges provided for in Articles 7, 9 and 12, respectively. This paragraph shall not preclude offers which provide roaming customers, for a per diem or any other fixed periodic charge, a certain volume allowance consistent with ordinary domestic usage and typical travel periods provided that consumption of the full amount of the volume included in the offer leads to a unit price per regulated calls made, SMS and data roaming services which does not exceed the maximum wholesale charges provided for in Articles 7, 9 and 12, respectively.*

3. *Roaming providers may offer and roaming customers may deliberately choose a roaming tariff other than the one set out in paragraphs 1 and 2, by virtue of which roaming customers benefit from a different tariff for regulated roaming service than they would have been accorded in the absence of such a choice. The roaming provider shall remind those roaming customers of the nature of the roaming advantages which would thereby be lost.*

Article 6b

Basic roaming allowance

1. *The basic roaming allowance shall be available at minimum for [a] days per year and shall allow a minimum daily consumption of [b] minutes of regulated voice calls made, all calls received, [c] regulated SMS sent and [d] megabytes of regulated data roaming services. Roaming providers may implement usage policies necessary to prevent anomalous or abusive usage of calls received.*
2. *As part of the exercise referred to in Article 19(5), BEREC shall report regularly on the evolution of pricing and consumption patterns in the Member States both for domestic and roaming services and the evolution of actual wholesale roaming rates for unbalanced traffic between roaming providers. BEREC shall annually publish information on market developments and provide their assessment on how these developments might affect the volume and availability of the basic roaming allowance.*

3. Roaming providers shall publish and include in their contracts detailed quantified information on how the basic roaming allowance is applied, by reference to its main pricing or volume parameters.

(3) In Article 14, paragraphs 1 and 3 are replaced as follows:

1. To alert roaming customers to the fact that they *may* be subject to roaming charges when making or receiving a call or when sending an SMS message, each roaming provider shall, except when the customer has notified the roaming 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 domestic provider, with basic personalised pricing information on the roaming charges (including VAT) that apply to the making [...] of calls and to the sending of SMS messages by that customer in the visited Member State.

That basic personalised [...] information shall include **information on the basic roaming allowance (volume and availability in number of days) and on the charges which apply in excess of the basic roaming allowance within the EU** (in the currency of the home bill provided by the customer's domestic provider) to which the customer may be subject under his tariff scheme for:

- (a) making regulated roaming calls within the visited Member State and back to the Member State of his domestic provider, as well as for regulated roaming calls received; and
- (b) sending regulated roaming SMS messages while in the visited Member State.

[Subparagraphs 3-5 unchanged]

Each roaming provider shall ensure that an appropriate notification is sent to the roaming customer's mobile device automatically by means of a Message Service to alert roaming customers that their consumption of regulated roaming calls and regulated SMS has reached the limit of the basic roaming allowance.

The first, second, fourth and fifth subparagraphs ***except the reference to the basic roaming allowance therein*** shall also apply to voice and SMS roaming services used by roaming customers travelling outside the Union and provided by a roaming provider.

3. Roaming providers shall provide all users with full information on applicable roaming charges, [...] 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.

They shall send a reminder at reasonable intervals thereafter to all customers who have opted for another tariff [...].

(4) In Article 15, paragraph 2 is replaced as follows:

2. An automatic message from the roaming provider shall inform the roaming customer that the latter is ***using data roaming services and provide basic personalised information on the basic roaming allowance (volume and availability in number of days) and on the charges which apply in excess of the basic roaming allowance*** (in the currency of the home bill provided by the customer's domestic provider), expressed in price per megabyte, applicable to the provision of regulated data roaming services to that roaming customer in the Member State concerned, except where the customer has notified the roaming provider that he does not require that information. ***Each roaming provider shall ensure that an appropriate notification is sent to the roaming customer's mobile device automatically by means of a Message Service to alert roaming customers that their consumption of regulated data roaming services has reached the limit of the basic roaming allowance.***

This notification and the basic personalised information shall be delivered to the roaming customer's mobile device, for example by an SMS message, an e-mail or a pop-up window on the mobile device, every time the roaming customer enters a Member State other than that of his domestic provider and initiates for the first time a 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.

[Subparagraph 3 unchanged]

(5) In Article 16(1), the following subparagraph is added:

National regulatory authorities shall monitor in particular whether roaming providers availing of Article 6a(3) engage in business practices which amount to circumvention of Article 6b.

(6) Article 19 is replaced by the following:

- 1. Upon entry into force of this Regulation, the Commission shall initiate a review of the wholesale roaming market with a view to assessing measures necessary, if any, to ensure phasing out of retail roaming surcharges. The Commission shall review, inter alia, the degree of competition in the wholesale markets, in particular the competitive situation of operators with limited geographic scope, including the effects of commercial agreements on competition as well as the ability of operators to take advantage of economies of scale. The Commission shall also assess the competition developments in the retail roaming markets. In particular, the review shall take into account the extent to which roaming providers have supplemented the basic roaming allowance, also in light of the BEREC assessment referred to in Article 6b(2), and the development of the level of the roaming surcharges.***
- 2. The Commission shall, by 30 June 2018, after a public consultation, report to the European Parliament and the Council on the findings of the wholesale review referred to in paragraph 1, and, if necessary, make appropriate legislative proposals.***

3. ***If the report referred to in paragraph 2 shows that (i) there is no level playing field between roaming providers and consequently that there is a need to amend wholesale roaming charges or to provide for another solution to address the issues identified at wholesale level or (ii) that customers still cannot confidently replicate their domestic consumption pattern at domestic prices while periodically travelling within the Union, the Commission shall, after consulting BEREC, make appropriate legislative proposals to the European Parliament and the Council to address this situation.***
4. In addition, the Commission shall submit a report to the European Parliament and the Council every two years after the report referred to in paragraph 2. Each 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.
5. In order to assess the competitive developments in the Union-wide roaming markets, BEREC shall regularly collect data from national regulatory authorities on the development of retail and wholesale charges for voice, SMS and data roaming services. Those data shall be notified to the Commission at least twice a year. The Commission shall make them public.

BEREC shall also annually collect information from national regulatory authorities on transparency and comparability of different tariffs offered by operators to their customers. The Commission shall make those data and findings public.

Article [X] - Entry into force

1. ***This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.***
2. ***It shall apply from 30 June 2016***