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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	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 – Outcome of the European Parliament's first reading (Strasbourg, 3 to 6 April 2017)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

In this context, the rapporteur, Ms Miapetra KUMPULA-NATRI (S&D - FI) presented a compromise amendment (amendment 21) to the proposal for Regulation, on behalf of the Committee on Industry, Research and Energy. This amendment had been agreed during the informal contacts referred to above.

¹ OJ C 145, 30.6.2007, p.5

II. VOTE

When it voted on 6 April 2017, the plenary adopted the compromise amendment (amendment 21) to the proposal for a Regulation.

The Commission's proposal as thus amended constitutes the Parliament's first-reading position². The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

Wholesale roaming markets ***I

European Parliament legislative resolution of 6 April 2017 on 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)0399 – C8-0219/2016 – 2016/0185(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0399),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0219/2016),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European and Social Committee of 19 October 2016³,
 - after consulting the Committee of the Regions,
 - having regard to the provisional agreement approved by the responsible committee under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 8 February 2017 to approve Parliament’s position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, Research and Energy (A8-0372/2016),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

³ OJ C 34, 2.2.2017, p. 162.

Position of the European Parliament adopted at first reading on 6 April 2017 with a view to the adoption of Regulation (EU) 2017/... of the European Parliament and of the Council amending Regulation (EU) No 531/2012 as regards rules for wholesale roaming markets

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁴,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure⁵,

⁴ OJ C 34, 2.2.2017, p. 162.

⁵ Position of the European Parliament of 6 April 2017.

Whereas:

- (1) Regulation (EU) No 531/2012 of the European Parliament and the Council⁶ introduces a common approach to the regulation of roaming on public mobile communications networks within the Union.
- (2) The Digital Single Market Strategy for Europe set out in the Commission's communication of 6 May 2015 considered the Telecoms Single Market package, subsequently adopted by Regulation (EU) 2015/2120 of the European Parliament and of the Council⁷, to be a first step towards eliminating retail roaming surcharges, thereby supporting the establishment of a digital single market in the Union.
- (3) Regulation (EU) 2015/2120 sets up a new retail pricing mechanism for Union-wide regulated roaming services in order to abolish retail roaming surcharges *from 15 June 2017* without distorting domestic and visited markets.

⁶ 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).

⁷ Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (OJ L 310, 26.11.2015, p. 1).

- (4) The abolition of retail roaming surcharges set up by Regulation (EU) 2015/2120, also referred to as "roam-like-at-home' (RLAH), is necessary to establish and ease the functioning of a digital single market across the Union. However, that Regulation alone is not sufficient to ensure the proper functioning of the roaming market. ***This Regulation should therefore contribute to pricing models in domestic markets not being affected by the abolition of retail roaming surcharges.***
- (5) The abolition of retail roaming surcharges from 15 June 2017 is subject to the applicability of any legislative act proposed by the Commission that provides for appropriate measures following the review of the wholesale roaming markets.
- (6) The Commission has conducted a comprehensive review of wholesale roaming markets to assess which measures are necessary to enable retail roaming surcharges to be abolished from 15 June 2017.

- (7) In light of the findings of its review, the Commission adopted its report on the review of the wholesale roaming market on 15 June 2016 ('the Commission Report'). The Commission Report finds that, in order to ensure that retail roaming services can be provided at domestic retail prices, wholesale roaming inputs must be available at a level that allows home operators to provide RLAH. Although having fully competitive national wholesale roaming markets in which prices are in line with visited networks' underlying costs of provision would clearly make RLAH more sustainable, the Commission Report shows that this is not the case. The Commission Report also demonstrates that the future retail RLAH obligation alone is highly unlikely to lead to well-functioning wholesale roaming markets that would enable the provision of RLAH in the Union from 15 June 2017.
- (8) In particular, 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, *to smaller operators, mobile virtual network operators (MVNOs)*, or net out-bound operators, making RLAH structurally unsustainable.

- (9) The functioning of wholesale roaming markets should allow operators to recover all costs of providing regulated wholesale roaming services, including joint and common costs. This should preserve incentives to invest in visited networks and avoid any distortion of domestic competition in the visited markets caused by regulatory arbitrage by operators using wholesale roaming access remedies to compete in domestic visited markets.
- (10) In light of obstacles identified, current measures applicable on the wholesale roaming markets should be amended to ensure that the level of wholesale roaming charges enables the sustainable provision of RLAH in the Union.

- (11) In order to allow for the development of more efficient, integrated and competitive markets for roaming services, when negotiating wholesale roaming access for the purpose of providing retail roaming services, operators should be given the alternative to negotiate innovative wholesale pricing schemes which are not directly linked to volumes actually consumed, such as flat payments, up-front commitments or capacity-based contracts, or pricing schemes that reflect variations of demand across the year. The negotiating parties should therefore have the option of agreeing not to apply maximum regulated wholesale roaming charges for the duration of wholesale roaming agreements. This would exclude the possibility for either party to subsequently request the application of volume-based maximum wholesale charges to actual consumption, as set out in Regulation (EU) No 531/2012. This alternative should be without prejudice to obligations as regards the provision of regulated retail roaming services in accordance with that Regulation.

(12) *The conditions that may be included in the reference offers in order to allow mobile network operators to prevent permanent roaming or anomalous or abusive use of wholesale roaming access should be clarified. In particular, where the visited network operator has reasonable grounds for considering that permanent roaming by a significant share of the roaming provider's customers or anomalous or abusive use of wholesale roaming access is taking place, it should be able to require that the roaming provider provide, in an aggregated manner and in full compliance with Union and national data protection requirements, information allowing the determination of whether a significant share of the roaming provider's customers is in a situation of permanent roaming or whether there is anomalous or abusive use of wholesale roaming access, such as information on the share of customers with insignificant domestic consumption compared to the roaming consumption. Moreover, termination of wholesale roaming agreements with a view to preventing permanent roaming or anomalous or abusive use of wholesale roaming access should be effected only where less stringent measures have failed to address the situation. Such termination should be subject to prior authorisation by the national regulatory authority of the visited network operator, taking the utmost account of the opinion of the Body of European Regulators for Electronic Communications (BEREC) where it has been consulted. Less stringent measures could consist of setting higher wholesale charges not exceeding the maximum wholesale charges provided for in this Regulation for volumes exceeding an aggregated volume specified in the agreement. Such higher wholesale charges should be set in advance, or from the moment when the visited network operator has established and informed the home network operator that, based on objective criteria, permanent roaming by a significant share of the roaming provider's customers or anomalous or abusive use of wholesale roaming access is taking place. Less stringent measures could also consist of a commitment by the home network operator to adopt or revise the fair use policies applicable to its customers in accordance with the detailed rules adopted pursuant to Article 6d of Regulation (EU) No 531/2012, or the possibility for the visited network operator to request that the wholesale roaming agreement be revised. In the interests of transparency, the national regulatory authority should make information concerning requests for authorisation to terminate wholesale roaming agreements available to the public, subject to business confidentiality.*

- (13) With regard to rules on wholesale charges, regulatory obligations at Union level should be maintained since any measure that enables RLAH across the Union without addressing the level of the wholesale costs associated with providing wholesale roaming services could risk disrupting the internal market for roaming services and would not encourage more competition. ***Wholesale charges at an appropriate level should facilitate sustainable competition, including by new entrants, small and medium-sized enterprises and start-ups.***
- (14) Maximum wholesale charges should act as a safeguard level and should ensure that operators can recover their costs, including joint and common costs. They should also enable the widespread sustainable provision of RLAH, while at the same time leaving a margin for commercial negotiations between operators.

- (15) The cost estimates for the provision of wholesale roaming services, including joint and common costs, have been assessed on the basis of several sources. One source was a general cost model for wholesale roaming services populated with national data and based on the method used by national regulatory authorities to determine mobile termination rates caps in accordance with Union law. A second source was alternative cost estimates based on consistent approaches across the Union on the regulation of national mobile termination rates. The assessment also drew on current wholesale roaming charges for unbalanced traffic in the Union and evidence of current wholesale access charges in domestic markets.

- (16) In considering cost estimates, the potential impact of the seasonal nature of roaming traffic on the overall costs of providing wholesale roaming services at national level has been taken into consideration. Such estimates noted the counterbalancing effects that would mitigate any potential increase in costs caused by the seasonality of roaming traffic. In particular for data services, increasing domestic demand means that any seasonal traffic peak in a given year is likely to be exceeded by total domestic demand in the following year(s). Accordingly, since terrestrial public mobile communications networks are dimensioned in order to cope with that general upward trend driven by domestic demand, any peak in total network demand caused by seasonal roaming flows is unlikely to drive mobile network dimensioning costs. For voice calls, where demand is more stable, in some Member States seasonal roaming peaks may have an impact on overall network dimensioning costs. However, such localised seasonal peaks in traffic are also likely to be driven by the movement of domestic users into tourist areas and mitigated by the compensating effect of users of roaming services on capacity usage in metropolitan areas during the summer holiday season.

- (17) *Usage of data services is growing rapidly in the Union and across the world. The introduction of RLAH from 15 June 2017 should contribute to that growth in the roaming context, leading to the cost per unit of data transmitted being driven down significantly. In order to take account of the increased usage of data services and the reduction in cost per unit of data transmitted, the maximum wholesale charge for regulated data roaming services should decrease each year and should be set in euro per gigabytes where a gigabyte is equal to 1 000 megabytes.* In setting the maximum wholesale charge for regulated data roaming services, all the access components needed to enable the provision of roaming services have been taken into account, including the transit costs of delivering data traffic to an exchange point identified by the home network operator.
- (18) The portfolio of services provided by each provider of wholesale roaming services, and their expected volumes of traffic should be taken into account when considering the safeguard role of wholesale roaming charges in achieving the twin objectives of ensuring that providers of wholesale roaming services recover all their relevant costs, while ensuring that the non-sustainability of RLAH remains exceptional.

- (19) The existing maximum wholesale charges for voice, SMS and data roaming services should therefore be lowered *substantially*.
- (20) While ensuring business confidentiality and in order to monitor and supervise the application of Regulation (EU) No 531/2012 and developments in wholesale roaming markets, national regulatory authorities should be entitled to require information on wholesale roaming agreements that do not provide for the application of the maximum wholesale roaming charges. Those authorities should also be allowed to require information on the adoption and application of conditions in wholesale roaming agreements aiming to prevent permanent roaming and any anomalous or abusive use of wholesale roaming access for purposes other than the provision of regulated roaming services to roaming providers' customers travelling within the Union.

(21) The specific price regulation applicable to wholesale roaming services entails that an overall Union cap applies to a composite product which may also include other wholesale roaming access and interconnection inputs, including in particular those subject to national or, potentially, cross-border regulation. In this regard divergences across the Union in the regulation of those inputs are predicted to decrease, in particular because of possible additional measures that may be taken in accordance with Directive 2002/21/EC of the European Parliament and of the Council⁸ (Framework Directive) aiming to ensure greater consistency of regulatory approaches. In the meantime, any dispute between visited network operators and other operators on the rates applied to those regulated inputs necessary for the provision of wholesale roaming services should be addressed, taking into account BEREC's opinion where it has been consulted, in accordance with the specific regulatory obligations applicable to roaming as well as with the Framework Directive and Directives 2002/20/EC⁹, 2002/19/EC¹⁰ and 2002/22/EC¹¹ of the European Parliament and of the Council.

⁸ 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).

⁹ Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) (OJ L 108, 24.4.2002, p. 21).

¹⁰ Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) (OJ L 108, 24.4.2002, p. 7).

¹¹ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ L 108, 24.4.2002, p. 51).

- (22) It is necessary to monitor and regularly review the functioning of wholesale roaming markets and their interrelationship with the retail roaming markets, taking into account competitive and technological developments and traffic flows. *To that end, the Commission should, by 15 December 2018, submit to the European Parliament and to the Council, an interim report summarising the effects of the abolition of retail roaming surcharges, taking into account any relevant BEREC report. The Commission should subsequently submit biennial reports to the European Parliament and to the Council. The first such report should be submitted by 15 December 2019. In its biennial reports, the Commission should, in particular, assess whether RLAH has any impact on the evolution of tariff plans available on the retail markets. This should include, on the one hand, an assessment of any emergence of tariff-plans that only include domestic services and that exclude retail roaming services altogether, thus undermining the very objective of RLAH and, on the other, an assessment of any reduction in the availability of flat-rate tariff plans, which could also represent a loss for consumers and undermine the objectives of the digital single market. The Commission's biennial reports should, in particular, analyse the extent to which exceptional retail roaming surcharges have been authorised by national regulatory authorities, the ability of home network operators to sustain their domestic charging models and the ability of visited network operators to recover the efficiently incurred costs of providing regulated wholesale roaming services.* In order to *enable such reporting with a view to assessing* how *the* roaming markets **█** adapt to RLAH rules, sufficient data should be gathered on *the* functioning of those markets after the implementation of those rules.

- (23) In order to assess the competitive developments in Union-wide roaming markets and to report regularly on changes in actual wholesale roaming charges for unbalanced traffic between providers of roaming services, BEREC should collect data from national regulatory authorities on the actual charges applied for balanced and unbalanced traffic respectively. BEREC should also collect data on cases where parties to a wholesale roaming agreement have opted out from the application of maximum wholesale roaming charges or have implemented measures at wholesale level that aim to prevent permanent roaming or anomalous or abusive use of wholesale roaming access for purposes other than the provision of regulated roaming services to roaming providers' customers while the latter are periodically travelling within the Union. ***On the basis of the data collected, BEREC should report regularly on the relationship between retail prices, wholesale charges and wholesale costs for roaming services.***

- (24) *The Commission, BEREC and the national regulatory authorities concerned should fully ensure business confidentiality when sharing information for the purposes of reviewing, monitoring and supervising the application of Regulation (EU) No 531/2012. Compliance with business confidentiality requirements should therefore not prevent national regulatory authorities from being able to share in a timely manner confidential information for such purposes.*
- (25) Regulation (EU) No 531/2012 should therefore be amended accordingly.
- (26) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States, namely because national measures cannot ensure that rules on wholesale roaming markets are consistent with Union rules on retail roaming services, but can rather, by reason of the cross-border effects of national wholesale roaming markets on the provision of retail roaming services within the Union, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(27) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 531/2012 is amended as follows:

(1) *Article 3 is amended as follows:*

(a) *in paragraph 4, the first subparagraph* is replaced by the following:

‘4. Rules on regulated wholesale roaming charges laid down in Articles 7, 9 and 12 shall apply to the provision of access to all components of wholesale roaming access referred to in paragraph 3, unless both parties to the wholesale roaming agreement explicitly agree that any average wholesale roaming charge resulting from the application of the agreement is not subject to the maximum regulated wholesale roaming charge for *the* period of *validity of the agreement.*’;

(b) paragraph 6 is replaced by the following:

‘6. The reference offer referred to in paragraph 5 shall be sufficiently detailed and shall include all components necessary for wholesale roaming access as referred to in paragraph 3, providing a description of the offerings relevant for direct wholesale roaming access and wholesale roaming resale access, and the associated terms and conditions.

That reference offer may include conditions to prevent permanent roaming or anomalous or abusive use of wholesale roaming access for purposes other than the provision of regulated roaming services to roaming providers’ customers while the latter are periodically travelling within the Union. ***Where specified in a reference offer, such conditions shall include the specific measures that the visited network operator may take to prevent permanent roaming or anomalous or abusive use of wholesale roaming access as well as the objective criteria on the basis of which such measures may be taken. Such criteria may refer to aggregate roaming traffic information. They shall not refer to specific information relating to individual traffic of the roaming provider’s customers.***

The reference offer may, inter alia, provide that, where the visited network operator has reasonable grounds for considering that permanent roaming by a significant share of the roaming provider's customers or anomalous or abusive use of wholesale roaming access is taking place, the visited network operator may require the roaming provider to provide, without prejudice to Union and national data protection requirements, information allowing the determination of whether a significant share of the roaming provider's customers is in a situation of permanent roaming or whether there is anomalous or abusive use of wholesale roaming access on the network of the visited operator, such as information on the share of customers for which a risk of anomalous or abusive use of regulated retail roaming services provided at the applicable domestic retail price has been established on the basis of objective indicators in accordance with the detailed rules on the application of the fair use policy adopted pursuant to Article 6d.

The reference offer may, as a last resort, where less stringent measures have failed to address the situation, provide for the possibility to terminate a wholesale roaming agreement where the visited network operator has established that, based on objective criteria, permanent roaming by a significant share of the roaming provider's customers or anomalous or abusive use of wholesale roaming access is taking place, and has informed the home network operator accordingly.

The visited network operator may terminate the wholesale roaming agreement unilaterally on grounds of permanent roaming or anomalous or abusive use of wholesale roaming access only upon the prior authorisation of the visited network operator's national regulatory authority.

Within three months of receipt of a request by the visited network operator for authorisation to terminate a wholesale roaming agreement, the national regulatory authority of the visited network operator shall, after consulting the national regulatory authority of the home network operator, decide whether to grant or refuse such authorisation and shall inform the Commission accordingly.

The national regulatory authorities of the visited network operator and of the home network operator may each request BEREC to adopt an opinion with regard to the action to be taken in accordance with this Regulation. BEREC shall adopt its opinion within one month of receipt of such a request.

Where BEREC has been consulted, the national regulatory authority of the visited network operator shall await and take the utmost account of BEREC's opinion before deciding, subject to the three-month deadline referred to in the sixth subparagraph, whether to grant or refuse authorisation for the termination of the wholesale roaming agreement.

The national regulatory authority of the visited network operator shall make information concerning authorisations to terminate wholesale roaming agreements available to the public, subject to business confidentiality.

The fifth to ninth subparagraphs shall be without prejudice to the power of a national regulatory authority to require the immediate cessation of a breach of the obligations set out in this Regulation, pursuant to Article 16(6) and to the right of the visited network operator to apply adequate measures in order to combat fraud.

If necessary, national regulatory authorities shall impose changes to reference offers, ***including as regards the specific measures that the visited network operator may take to prevent permanent roaming or anomalous or abusive use of wholesale roaming access, and the objective criteria on the basis of which the visited network operator may take such measures,*** to give effect to obligations laid down in this Article.?’

(2) In Article 7, paragraphs 1 and 2 are replaced by the following:

‘1. With effect from 15 June 2017, the average wholesale charge that the visited network operator may levy on the roaming provider for the provision of a regulated roaming call originating on that visited network, inclusive, among others, of origination, transit and termination costs, shall not exceed a safeguard limit of EUR **0,032** per minute. ***That maximum wholesale charge*** shall, without prejudice to Article 19, remain at EUR **0,032** until 30 June 2022.

2. The average wholesale charge referred to in paragraph 1 shall apply between any pair of operators and shall be calculated over a 12-month period or any such shorter period as may remain before the end of the period of application of a maximum average wholesale charge, as provided for in paragraph 1 or before 30 June 2022.’

(3) In Article 9, paragraph 1 is replaced by the following:

‘1. With effect from 15 June 2017, the average wholesale charge that the visited network operator may levy on the roaming provider for the provision of a regulated roaming SMS message originating on that visited network shall not exceed a safeguard limit of EUR 0,01 per SMS message and shall, without prejudice to Article 19, remain at EUR 0,01 until 30 June 2022.’.

(4) In Article 12, paragraph 1 is replaced by the following:

‘1. With effect from 15 June 2017, the average wholesale charge that the visited network operator may levy on the roaming provider for the provision of regulated data roaming services by means of that visited network shall not exceed a safeguard limit of EUR 7,70 per *gigabyte* of data transmitted. ***That maximum wholesale charge shall decrease to EUR 6,00 per gigabyte on 1 January 2018, to EUR 4,50 per gigabyte on 1 January 2019, to EUR 3,50 per gigabyte on 1 January 2020, to EUR 3,00 per gigabyte on 1 January 2021 and to EUR 2,50 per gigabyte on 1 January 2022.*** It shall, without prejudice to Article 19, remain at EUR 2,50 per *gigabyte* of data transmitted until 30 June 2022.’.

(5) *Article 16 is amended as follows:*

(a) *paragraph 2 is replaced by the following:*

‘2. National regulatory authorities **and, where relevant, BEREC** shall make up-to-date information on the application of this Regulation, in particular Articles 6a, 6b, 6c, 6e, 7, 9, and 12, publicly available in a manner that enables interested parties to have easy access to it.’;

(b) *the following paragraph is inserted:*

‘4a. Where a national regulatory authority considers information to be confidential in accordance with Union and national rules on business confidentiality, the Commission, BEREC and any other national regulatory authorities concerned shall ensure such confidentiality. Business confidentiality shall not prevent the timely sharing of information between the national regulatory authority, the Commission, BEREC and any other national regulatory authorities concerned for the purposes of reviewing, monitoring and supervising the application of this Regulation.’.

(6) In Article 17(1), the following subparagraph is added:

‘Disputes between visited network operators and other operators on rates applied to inputs necessary for the provision of regulated wholesale roaming services may be referred to the competent national regulatory authority or authorities pursuant to Article 20 or 21 of the Framework Directive. In such a case, the competent national regulatory authority or authorities *may* consult BEREC about the action to be taken in accordance with the Framework Directive, the Specific Directives or this Regulation to resolve the dispute. Where BEREC has been consulted, the competent national regulatory authority or authorities shall await BEREC's opinion before taking action to resolve the dispute.’.

(7) Article 19 is amended as follows:

(a) **■** paragraph 3 **■** is replaced by the following:

‘3. In addition, the Commission shall, by 15 December 2018, submit to the European Parliament and to the Council an interim report summarising the effects of the abolition of retail roaming surcharges, taking into account any relevant BEREC report. The Commission shall subsequently, after consulting BEREC, submit biennial reports to the European Parliament and to the Council, accompanied, if appropriate, by a legislative proposal to amend the maximum wholesale charges for regulated roaming services laid down in this Regulation. The first such report shall be submitted by 15 December 2019.

Those biennial reports shall include, inter alia, an assessment of:

(a) the availability and quality of services, including those which are an alternative to regulated retail voice, SMS and data roaming services, in particular in the light of technological developments;

- (b) the degree of competition in both the retail and wholesale roaming markets, in particular the competitive situation of small, independent or newly started operators, **and MVNOs**, including the competition effects of commercial agreements and the degree of interconnection between operators;
- (c) the extent to which the implementation of the structural measures provided for in Articles 3 and 4, **and, in particular, on the basis of the information provided by the national regulatory authorities, of the procedure for prior authorisations laid down in Article 3(6)**, has produced results in the development of competition in the internal market for regulated roaming services;
- (d) **the evolution of the retail tariff plans available;**
- (e) **changes in data consumption patterns for both domestic and roaming services;**
- (f) **the ability of home network operators to sustain their domestic charging model and the extent to which exceptional retail roaming surcharges have been authorised pursuant to Article 6c;**

(g) the ability of visited network operators to recover the efficiently incurred costs of providing regulated wholesale roaming services;

(h) the impact of the application of fair use policies by operators in accordance with Article 6d, including the identification of any inconsistencies in the application and implementation of such fair use policies.’;

(b) paragraph 4 ■ is replaced by the following:

‘4. In order to assess the competitive developments in the Union-wide roaming markets, BEREC shall regularly collect data from national regulatory authorities on developments in retail and wholesale charges for regulated voice, SMS and data roaming services, including wholesale charges applied for balanced and unbalanced roaming traffic respectively. It shall also collect data on the wholesale roaming agreements not subject to the maximum wholesale roaming charges provided for in Articles 7, 9 or 12 and on the implementation of contractual measures at wholesale level aiming to prevent permanent roaming or anomalous or abusive use of wholesale roaming access for purposes other than the provision of regulated roaming services to roaming providers’ customers while the latter are periodically travelling within the Union.

Those data shall be notified to the Commission at least twice a year. The Commission shall make them public.

On the basis of data collected, BEREC shall report regularly on the evolution of pricing and consumption patterns in the Member States both for domestic and roaming services, the evolution of actual wholesale roaming rates for unbalanced traffic between providers of roaming services, ***and on the relationship between retail prices, wholesale charges and wholesale costs for roaming services. BEREC shall assess how closely those elements relate to each other.***

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 2

This Regulation shall enter into force on the *third* day following that of its publication in the *Official Journal of the European Union*.

Points 2, 3 and 4 of Article 1 shall apply from 15 June 2017.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ,

For the European Parliament

For the Council

The President

The President
