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THE EUROPEAN PARLIAMENT **THE COUNCIL**

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REGULATION
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
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

REGULATION (EU) 2015/…
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

(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 Committee[1],

Having regard to the opinion of the Committee of the Regions[2],

Acting in accordance with the ordinary legislative procedure[3],

[1] OJ C 177, 11.6.2014, p. 64.
[2] OJ C 126, 26.4.2014, p. 53.
[3] Position of the European Parliament of 3 April 2014 (not yet published in the Official Journal) and position of the Council at first reading of 1 October 2015 (OJ C 365, 4.11.2015, p.1.). Position of the European Parliament of 27 October 2015 (not yet published in the Official Journal).

Whereas:

(1) This Regulation aims to establish common rules to safeguard equal and non-discriminatory treatment of traffic in the provision of internet access services and related end-users' rights. It aims to protect end-users and simultaneously to guarantee the continued functioning of the internet ecosystem as an engine of innovation. Reforms in the field of roaming should give end-users the confidence to stay connected when they travel within the Union, and should, over time, become a driver of convergent pricing and other conditions in the Union.

(2) The measures provided for in this Regulation respect the principle of technological neutrality, that is to say they neither impose nor discriminate in favour of the use of a particular type of technology.

(3) The internet has developed over the past decades as an open platform for innovation with low access barriers for end-users, providers of content, applications and services and providers of internet access services. The existing regulatory framework aims to promote the ability of end-users to access and distribute information or run applications and services of their choice. However, a significant number of end-users are affected by traffic management practices which block or slow down specific applications or services. Those tendencies require common rules at the Union level to ensure the openness of the internet and to avoid fragmentation of the internal market resulting from measures adopted by individual Member States.

(4) An internet access service provides access to the internet, and in principle to all the end-points thereof, irrespective of the network technology and terminal equipment used by end-users. However, for reasons outside the control of providers of internet access services, certain end points of the internet may not always be accessible. Therefore, such providers should be deemed to have complied with their obligations related to the provision of an internet access service within the meaning of this Regulation when that service provides connectivity to virtually all end points of the internet. Providers of internet access services should therefore not restrict connectivity to any accessible end-points of the internet.

(5) When accessing the internet, end-users should be free to choose between various types of terminal equipment as defined in Commission Directive 2008/63/EC[1]. Providers of internet access services should not impose restrictions on the use of terminal equipment connecting to the network in addition to those imposed by manufacturers or distributors of terminal equipments in accordance with Union law.

(6) End-users should have the right to access and distribute information and content, and to use and provide applications and services without discrimination, via their internet access service. The exercise of this right should be without prejudice to Union law, or national law that complies with Union law, regarding the lawfulness of content, applications or services. This Regulation does not seek to regulate the lawfulness of the content, applications or services, nor does it seek to regulate the procedures, requirements and safeguards related thereto. Those matters therefore remain subject to Union law, or national law that complies with Union law.

[1] Commission Directive 2008/63/EC of 20 June 2008 on competition in the markets in telecommunications terminal equipment (OJ L 162, 21.6.2008, p. 20).

(7) In order to exercise their rights to access and distribute information and content and to use and provide applications and services of their choice, end-users should be free to agree with providers of internet access services on tariffs for specific data volumes and speeds of the internet access service. Such agreements, as well as any commercial practices of providers of internet access services, should not limit the exercise of those rights and thus circumvent provisions of this Regulation safeguarding open internet access. National regulatory and other competent authorities should be empowered to intervene against agreements or commercial practices which, by reason of their scale, lead to situations where end-users' choice is materially reduced in practice. To this end, the assessment of agreements and commercial practices should *inter alia* take into account the respective market positions of those providers of internet access services, and of the providers of content, applications and services, that are involved. National regulatory and other competent authorities should be required, as part of their monitoring and enforcement function, to intervene when agreements or commercial practices would result in the undermining of the essence of the end-users' rights.

(8) When providing internet access services, providers of those services should treat all traffic equally, without discrimination, restriction or interference, independently of its sender or receiver, content, application or service, or terminal equipment. According to general principles of Union law and settled case-law, comparable situations should not be treated differently and different situations should not be treated in the same way unless such treatment is objectively justified.

(9) The objective of reasonable traffic management is to contribute to an efficient use of network resources and to an optimisation of overall transmission quality responding to the objectively different technical quality of service requirements of specific categories of traffic, and thus of the content, applications and services transmitted. Reasonable traffic management measures applied by providers of internet access services should be transparent, non-discriminatory and proportionate, and should not be based on commercial considerations. The requirement for traffic management measures to be non-discriminatory does not preclude providers of internet access services from implementing, in order to optimise the overall transmission quality, traffic management measures which differentiate between objectively different categories of traffic. Any such differentiation should**,** in order to optimise overall quality and user experience**,** be permitted only on the basis of objectively different technical quality of service requirements (for example, in terms of latency, jitter, packet loss, and bandwidth) of the specific categories of traffic, and not on the basis of commercial considerations. Such differentiating measures should be proportionate in relation to the purpose of overall quality optimisation and should treat equivalent traffic equally. Such measures should not be maintained for longer than necessary.

(10) Reasonable traffic management does not require techniques which monitor the specific content of data traffic transmitted via the internet access service.

(11) Any traffic management practices which go beyond such reasonable traffic management measures, by blocking, slowing down, altering, restricting, interfering with, degrading or discriminating between specific content, applications or services, or specific categories of content, applications or services, should be prohibited, subject to the justified and defined exceptions laid down in this Regulation. Those exceptions should be subject to strict interpretation and to proportionality requirements. Specific content, applications and services, as well as specific categories thereof, should be protected because of the negative impact on end-user choice and innovation of blocking, or of other restrictive measures not falling within the justified exceptions. Rules against altering content, applications or services refer to a modification of the content of the communication, but do not ban non-discriminatory data compression techniques which reduce the size of a data file without any modification of the content. Such compression enables a more efficient use of scarce resources and serves the end-users' interests by reducing data volumes, increasing speed and enhancing the experience of using the content, applications or services concerned.

(12) Traffic management measures that go beyond such reasonable traffic management measures may only be applied as necessary and for as long as necessary to comply with the three justified exceptions laid down in this Regulation.

(13) First, situations may arise in which providers of internet access services are subject to Union legislative acts, or national legislation that complies with Union law (for example, related to the lawfulness of content, applications or services, or to public safety), including criminal law, requiring, for example, blocking of specific content, applications or services. In addition, situations may arise in which those providers are subject to measures that comply with Union law, implementing or applying Union legislative acts or national legislation, such as measures of general application, court orders, decisions of public authorities vested with relevant powers, or other measures ensuring compliance with such Union legislative acts or national legislation (for example, obligations to comply with court orders or orders by public authorities requiring to block unlawful content). The requirement to comply with Union law relates, inter alia, to the compliance with the requirements of the Charter of Fundamental Rights of the European Union ('the Charter') in relation to limitations on the exercise of fundamental rights and freedoms. As provided in Directive 2002/21/EC of the European Parliament and of the Council[1], any measures liable to restrict those fundamental rights or freedoms are only to be imposed if they are appropriate, proportionate and necessary within a democratic society, and if their implementation is subject to adequate procedural safeguards in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms, including its provisions on effective judicial protection and due process.

[1] 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).

(14) Second, traffic management measures going beyond such reasonable traffic management measures might be necessary to protect the integrity and security of the network, for example by preventing cyber-attacks that occur through the spread of malicious software or identity theft of end-users that occurs as a result of spyware.

(15) Third, measures going beyond such reasonable traffic management measures might also be necessary to prevent impending network congestion, that is, situations where congestion is about to materialise, and to mitigate the effects of network congestion, where such congestion occurs only temporarily or in exceptional circumstances. The principle of proportionality requires that traffic management measures based on that exception treat equivalent categories of traffic equally. Temporary congestion should be understood as referring to specific situations of short duration, where a sudden increase in the number of users in addition to the regular users, or a sudden increase in demand for specific content, applications or services, may overflow the transmission capacity of some elements of the network and make the rest of the network less reactive. Temporary congestion might occur especially in mobile networks, which are subject to more variable conditions, such as physical obstructions, lower indoor coverage, or a variable number of active users with changing location. While it may be predictable that such temporary congestion might occur from time to time at certain points in the network – such that it cannot be regarded as exceptional – it might not recur so often or for such extensive periods that a capacity expansion would be economically justified. Exceptional congestion should be understood as referring to unpredictable and unavoidable situations of congestion, both in mobile and fixed networks.

Possible causes of those situations include a technical failure such as a service outage due to broken cables or other infrastructure elements, unexpected changes in routing of traffic or large increases in network traffic due to emergency or other situations beyond the control of providers of internet access services. Such congestion problems are likely to be infrequent but may be severe, and are not necessarily of short duration. The need to apply traffic management measures going beyond the reasonable traffic management measures in order to prevent or mitigate the effects of temporary or exceptional network congestion should not give providers of internet access services the possibility to circumvent the general prohibition on blocking, slowing down, altering, restricting, interfering with, degrading or discriminating between specific content, applications or services, or specific categories thereof. Recurrent and more long-lasting network congestion which is neither exceptional nor temporary should not benefit from that exception but should rather be tackled through expansion of network capacity.

(16) There is demand on the part of providers of content, applications and services to be able to provide electronic communication services other than internet access services, for which specific levels of quality, that are not assured by internet access services, are necessary. Such specific levels of quality are, for instance, required by some services responding to a public interest or by some new machine-to-machine communications services. Providers of electronic communications to the public, including providers of internet access services, and providers of content, applications and services should therefore be free to offer services which are not internet access services and which are optimised for specific content, applications or services, or a combination thereof, where the optimisation is necessary in order to meet the requirements of the content, applications or services for a specific level of quality. National regulatory authorities should verify whether and to what extent such optimisation is objectively necessary to ensure one or more specific and key features of the content, applications or services and to enable a corresponding quality assurance to be given to end-users, rather than simply granting general priority over comparable content, applications or services available via the internet access service and thereby circumventing the provisions regarding traffic management measures applicable to the internet access services.

(17) In order to avoid the provision of such other services having a negative impact on the availability or general quality of internet access services for end-users, sufficient capacity needs to be ensured. Providers of electronic communications to the public, including providers of internet access services, should, therefore, offer such other services, or conclude corresponding agreements with providers of content, applications or services facilitating such other services, only if the network capacity is sufficient for their provision in addition to any internet access services provided. The provisions of this Regulation on the safeguarding of open internet access should not be circumvented by means of other services usable or offered as a replacement for internet access services. However, the mere fact that corporate services such as virtual private networks might also give access to the internet should not result in them being considered to be a replacement of the internet access services, provided that the provision of such access to the internet by a provider of electronic communications to the public complies with Article 3(1) to (4) of this Regulation, and therefore cannot be considered to be a circumvention of those provisions. The provision of such services other than internet access services should not be to the detriment of the availability and general quality of internet access services for end-users. In mobile networks, traffic volumes in a given radio cell are more difficult to anticipate due to the varying number of active end-users, and for this reason an impact on the quality of internet access services for end-users might occur in unforeseeable circumstances.

In mobile networks, the general quality of internet access services for end-users should not be deemed to incur a detriment where the aggregate negative impact of services other than internet access services is unavoidable, minimal and limited to a short duration. National regulatory authorities should ensure that providers of electronic communications to the public comply with that requirement. In this respect, national regulatory authorities should assess the impact on the availability and general quality of internet access services by analysing, inter alia, quality of service parameters (such as latency, jitter, packet loss), the levels and effects of congestion in the network, actual versus advertised speeds, the performance of internet access services as compared with services other than internet access services, and quality as perceived by end-users.

(18) The provisions on safeguarding of open internet access should be complemented by effective end-user provisions which address issues particularly linked to internet access services and enable end-users to make informed choices. Those provisions should apply in addition to the applicable provisions of Directive 2002/22/EC of the European Parliament and of the Council[1] and Member States should have the possibility to maintain or adopt more far-reaching measures. Providers of internet access services should inform end-users in a clear manner how traffic management practices deployed might have an impact on the quality of internet access services, end-users' privacy and the protection of personal data as well as about the possible impact of services other than internet access services to which they subscribe, on the quality and availability of their respective internet access services. In order to empower end-users in such situations, providers of internet access services should therefore inform end-users in the contract of the speed which they are able realistically to deliver. The normally available speed is understood to be the speed that an end-user could expect to receive most of the time when accessing the service. Providers of internet access services should also inform consumers of available remedies in accordance with national law in the event of non-compliance of performance. Any significant and continuous or regularly recurring difference, where established by a monitoring mechanism certified by the national regulatory authority, between the actual performance of the service and the performance indicated in the contract should be deemed to constitute non-conformity of performance for the purposes of determing the remedies available to the consumer in accordance with national law. The methodology should be established in the guidelines of the Body of European Regulators for Electronic Communications (BEREC) and reviewed and updated as necessary to reflect technology and infrastructure evolution. National regulatory authorities should enforce compliance with the rules in this Regulation on transparency measures for ensuring open internet access.

[1] 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)

(19) National regulatory authorities play an essential role in ensuring that end-users are able to exercise effectively their rights under this Regulation and that the rules on the safeguarding of open internet access are complied with. To that end, national regulatory authorities should have monitoring and reporting obligations, and should ensure that providers of electronic communications to the public, including providers of internet access services, comply with their obligations concerning the safeguarding of open internet access. Those include the obligation to ensure sufficient network capacity for the provision of high quality non-discriminatory internet access services, the general quality of which should not incur a detriment by reason of the provision of services other than internet access services, with a specific level of quality. National regulatory authorities should also have powers to impose requirements concerning technical characteristics, minimum quality of service requirements and other appropriate measures on all or individual providers of electronic communications to the public if this is necessary to ensure compliance with the provisions of this Regulation on the safeguarding of open internet access or to prevent degradation of the general quality of service of internet access services for end-users. In doing so, national regulatory authorities should take utmost account of relevant guidelines from BEREC.

(20) The mobile communications market remains fragmented in the Union, with no mobile network covering all Member States. As a consequence, in order to provide mobile communications services to their domestic customers travelling within the Union, roaming providers have to purchase wholesale roaming services from, or exchange wholesale roaming services with, operators in a visited Member State.

(21) Regulation (EU) No 531/2012 of the European Parliament and of the Council[1] establishes the policy objective that the difference between roaming and domestic tariffs should approach zero. However, the ultimate aim of eliminating the difference between domestic charges and roaming charges cannot be attained in a sustainable manner with the observed level of wholesale charges. Therefore this Regulation sets out that retail roaming surcharges should be abolished from 15 June 2017, provided that the issues currently observed in the wholesale roaming markets have been addressed. In this respect, the Commission should conduct a review of the wholesale roaming market, and should submit a legislative proposal based on the outcome of that review.

(22) At the same time, roaming providers should be able to apply a 'fair use policy' to the consumption of regulated retail roaming services provided at the applicable domestic retail price. The 'fair use policy' is intended to prevent abusive or anomalous usage of regulated retail roaming services by roaming customers, such as the use of such services by roaming customers in a Member State other than that of their domestic provider for purposes other than periodic travel. Any fair use policy should enable the roaming provider's customers to consume volumes of regulated retail roaming services at the applicable domestic retail price that are consistent with their respective tariff plans.

[1] 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).

(23) In specific and exceptional circumstances where a roaming provider is not able to recover its overall actual and projected costs of providing regulated retail roaming services from its overall actual and projected revenues from the provision of such services, that roaming provider should be able to apply for authorisation to apply a surcharge with a view to ensuring the sustainability of its domestic charging model. The assessment of the sustainability of the domestic charging model should be based on relevant objective factors specific to the roaming provider, including objective variations between roaming providers in the Member State concerned and the level of domestic prices and revenues. That may, for example, be the case for flat-rate domestic retail models of operators with significant negative traffic imbalances, where the implicit domestic unit price is low and the operator's overall revenues are also low relative to the roaming cost burden, or where the implicit unit price is low and actual or projected roaming services consumption is high. Once both wholesale and retail roaming markets have fully adjusted to the generalisation of roaming at domestic price levels and its incorporation as a normal feature of retail tariff plans, such exceptional circumstances are no longer expected to arise. In order to avoid the domestic charging model of roaming providers being rendered unsustainable by such cost recovery problems, generating a risk of an appreciable effect on the evolution of domestic prices or so-called 'waterbed effect', roaming providers, upon authorisation by the national regulatory authority, should, in such circumstances, be able to apply a surcharge to regulated retail roaming services only to the extent necessary to recover all relevant costs of providing such services.

(24) To that end, the costs incurred in order to provide regulated retail roaming services should be determined by reference to the effective wholesale roaming charges applied to the outbound roaming traffic of the roaming provider concerned in excess of its inbound roaming traffic, as well as by reference to reasonable provision for joint and common costs. Revenues from regulated retail roaming services should be determined by reference to revenues at domestic price levels attributable to the consumption of regulated retail roaming services, whether on a unit-price basis or as a proportion of a flat fee, reflecting the respective actual and projected proportions of regulated retail roaming services consumption by customers within the Union and domestic consumption. Account should also be taken of the consumption of regulated retail roaming services and domestic consumption by the roaming provider's customers, and of the level of competition, prices and revenues in the domestic market, and any observable risk that roaming at domestic retail prices would appreciably affect the evolution of such prices.

(25) In order to ensure a smooth transition from Regulation (EU) No 531/2012 to the abolition of retail roaming surcharges, this Regulation should introduce a transitional period, in which the roaming providers should be able to add a surcharge to domestic prices for regulated retail roaming services provided. That transitional regime should already prepare the fundamental change in approach by incorporating Union-wide roaming as an integral part of domestic tariff plans offered in the various domestic markets. Thus, the starting point of the transitional regime should be the respective domestic retail prices, which may be subject to a surcharge no greater than the maximum wholesale roaming charge applicable in the period immediately preceding the transitional period. Such a transitional regime should also ensure substantial price cuts for customers from the date of application of this Regulation and should not, when the surcharge is added to the domestic retail price, lead under any circumstances to a higher retail roaming price than the maximum regulated retail roaming charge applicable in the period immediately preceding the transitional period.

(26) The relevant domestic retail price should be equal to the domestic retail per-unit charge. However, in situations where there are no specific domestic retail prices that could be used as a basis for a regulated retail roaming service (for example, in case of domestic unlimited tariff plans, bundles or domestic tariffs which do not include data), the domestic retail price should be deemed to be the same charging mechanism as if the customer were consuming the domestic tariff plan in that customer's Member State.

(27) With a view to improving competition in the retail roaming market, Regulation (EU) No 531/2012 requires domestic providers to enable their customers to access regulated voice, SMS and data roaming services, provided as a bundle by any alternative roaming provider. Given that the retail roaming regime set out in this Regulation is to abolish in the near future retail roaming charges set out in Articles 8, 10 and 13 of Regulation (EU) No 531/2012, it would no longer be proportionate to oblige domestic providers to implement this type of separate sale of regulated retail roaming services. Providers which have already enabled their customers to access regulated voice, SMS and data roaming services, provided as a bundle by any alternative roaming provider, may continue to do so. On the other hand, it cannot be excluded that roaming customers could benefit from more competitive retail pricing, in particular for data roaming services, in visited markets. Given the increasing demand for and importance of data roaming services, roaming customers should be provided with alternative ways of accessing data roaming services when travelling within the Union. Therefore, the obligation on domestic and roaming providers not to prevent customers from accessing regulated data roaming services provided directly on a visited network by an alternative roaming provider as provided for in Regulation (EU) No 531/2012 should be maintained.

(28) In accordance with the principle that the calling party pays, mobile customers do not pay for receiving domestic mobile calls and the cost of terminating a call in the network of the called party is covered in the retail charge of the calling party. The convergence of mobile termination rates across the Member States should allow the same principle to be applied to regulated retail roaming calls. However, since this is not yet the case, in situations set out in this Regulation where roaming providers are allowed to apply a surcharge for regulated retail roaming services, the surcharge applied for regulated roaming calls received should not exceed the weighted average of the maximum wholesale mobile termination rates set across the Union. This is considered to be a transitional regime until the Commission addresses this outstanding issue.

(29) Regulation (EU) No 531/2012 should therefore be amended accordingly.

(30) This Regulation should constitute a specific measure within the meaning of Article 1(5) of Directive 2002/21/EC. Therefore, where providers of Union-wide regulated roaming services make changes to their retail roaming tariffs and to accompanying roaming usage policies in order to comply with the requirements of this Regulation, such changes should not trigger for mobile customers any right under national laws transposing the current regulatory framework for electronic communications networks and services to withdraw from their contracts.

(31) In order to strengthen the rights of roaming customers laid down in Regulation (EU) No 531/2012, this Regulation should in relation to regulated retail roaming services lay down specific transparency requirements aligned with the specific tariff and volume conditions to be applied once retail roaming surcharges are abolished. In particular, provision should be made for roaming customers to be notified, in a timely manner and free of charge, of the applicable fair use policy, when the applicable fair use volume of regulated voice, SMS or data roaming services is fully consumed, of any surcharge, and of accumulated consumption of regulated data roaming services.

(32) In order to ensure uniform conditions for the implementation of the provisions of this Regulation, implementing powers should be conferred on the Commission in respect of setting out the weighted average of maximum mobile termination rates, and detailed rules on the application of the fair use policy and on the methodology for assessing the sustainability of the abolition of retail roaming surcharges, as well as on the application to be submitted by a roaming provider for the purposes of that assessment. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[1].

[1] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

(33) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter, notably the protection of personal data, the freedom of expression and information, the freedom to conduct a business, non-discrimination and consumer protection.

(34) Since the objective of this Regulation, namely to establish common rules necessary for safeguarding open internet access and abolishing retail roaming surcharges, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, 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 that objective.

(35) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council[1] and delivered an opinion on 24 November 2013,

HAVE ADOPTED THIS REGULATION:

[1] Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

Article 1

Subject matter and scope

1. This Regulation establishes common rules to safeguard equal and non-discriminatory treatment of traffic in the provision of internet access services and related end-users' rights.

2. This Regulation sets up a new retail pricing mechanism for Union-wide regulated roaming services in order to abolish retail roaming surcharges without distorting domestic and visited markets.

Article 2

Definitions

For the purposes of this Regulation, the definitions set out in Article 2 of Directive 2002/21/EC apply.

The following definitions also apply:

(1) 'provider of electronic communications to the public' means an undertaking providing public communications networks or publicly available electronic communications services;

(2) 'internet access service' means a publicly available electronic communications service that provides access to the internet, and thereby connectivity to virtually all end points of the internet, irrespective of the network technology and terminal equipment used.

Article 3

Safeguarding of open internet access

1. End-users shall have the right to access and distribute information and content, use and provide applications and services, and use terminal equipment of their choice, irrespective of the end-user's or provider's location or the location, origin or destination of the information, content, application or service, via their internet access service.

   This paragraph is without prejudice to Union law, or national law that complies with Union law, related to the lawfulness of the content, applications or services.

2. Agreements between providers of internet access services and end-users on commercial and technical conditions and the characteristics of internet access services such as price, data volumes or speed, and any commercial practices conducted by providers of internet access services, shall not limit the exercise of the rights of end-users laid down in paragraph 1.

3. Providers of internet access services shall treat all traffic equally, when providing internet access services, without discrimination, restriction or interference, and irrespective of the sender and receiver, the content accessed or distributed, the applications or services used or provided, or the terminal equipment used.

The first subparagraph shall not prevent providers of internet access services from implementing reasonable traffic management measures. In order to be deemed to be reasonable, such measures shall be transparent, non-discriminatory and proportionate, and shall not be based on commercial considerations but on objectively different technical quality of service requirements of specific categories of traffic. Such measures shall not monitor the specific content and shall not be maintained for longer than necessary.

Providers of internet access services shall not engage in traffic management measures going beyond those set out in the second subparagraph, and in particular shall not block, slow down, alter, restrict, interfere with, degrade or discriminate between specific content, applications or services, or specific categories thereof, except as necessary, and only for as long as necessary, in order to:

(a) comply with Union legislative acts, or national legislation that complies with Union law, to which the provider of internet access services is subject, or with measures that comply with Union law giving effect to such Union legislative acts or national legislation, including with orders by courts or public authorities vested with relevant powers;

(b) preserve the integrity and security of the network, of services provided via that network, and of the terminal equipment of end-users;

(c) prevent impending network congestion and mitigate the effects of exceptional or temporary network congestion, provided that equivalent categories of traffic are treated equally.

4. Any traffic management measure may entail processing of personal data only if such processing is necessary and proportionate to achieve the objectives set out in paragraph 3. Such processing shall be carried out in accordance with Directive 95/46/EC of the European Parliament and of the Council[1]. Traffic management measures shall also comply with Directive 2002/58/EC of the European Parliament and of the Council[2].

5. Providers of electronic communications to the public, including providers of internet access services, and providers of content, applications and services shall be free to offer services other than internet access services which are optimised for specific content, applications or services, or a combination thereof, where the optimisation is necessary in order to meet requirements of the content, applications or services for a specific level of quality.

Providers of electronic communications to the public, including providers of internet access services, may offer or facilitate such services only if the network capacity is sufficient to provide them in addition to any internet access services provided. Such services shall not be usable or offered as a replacement for internet access services, and shall not be to the detriment of the availability or general quality of internet access services for end-users.

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1 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

2 Directive 2002/58/EC of the European Parliament and of the Council of 12 July 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).

Article 4

Transparency measures for ensuring open internet access

1. Providers of internet access services shall ensure that any contract which includes internet access services specifies at least the following:

   (a) information on how traffic management measures applied by that provider could impact on the quality of the internet access services, on the privacy of end-users and on the protection of their personal data;

   (b) a clear and comprehensible explanation as to how any volume limitation, speed and other quality of service parameters may in practice have an impact on internet access services, and in particular on the use of content, applications and services;

   (c) a clear and comprehensible explanation of how any services referred to in Article 3(5) to which the end-user subscribes might in practice have an impact on the internet access services provided to that end-user;

   (d) a clear and comprehensible explanation of the minimum, normally available, maximum and advertised download and upload speed of the internet access services in the case of fixed networks, or of the estimated maximum and advertised download and upload speed of the internet access services in the case of mobile networks, and how significant deviations from the respective advertised download and upload speeds could impact the exercise of the end-users' rights laid down in Article 3(1);

(e) a clear and comprehensible explanation of the remedies available to the consumer in accordance with national law in the event of any continuous or regularly recurring discrepancy between the actual performance of the internet access service regarding speed or other quality of service parameters and the performance indicated in accordance with points (a) to (d).

Providers of internet access services shall publish the information referred to in the first subparagraph.

2. Providers of internet access services shall put in place transparent, simple and efficient procedures to address complaints of end-users relating to the rights and obligations laid down in Article 3 and paragraph 1 of this Article.

3. The requirements laid down in paragraphs 1 and 2 are in addition to those provided for in Directive 2002/22/EC and shall not prevent Member States from maintaining or introducing additional monitoring, information and transparency requirements, including those concerning the content, form and manner of the information to be published. Those requirements shall comply with this Regulation and the relevant provisions of Directives 2002/21/EC and 2002/22/EC.

4. Any significant discrepancy, continuous or regularly recurring, between the actual performance of the internet access service regarding speed or other quality of service parameters and the performance indicated by the provider of internet access services in accordance with points (a) to (d) of paragraph 1 shall, where the relevant facts are established by a monitoring mechanism certified by the national regulatory authority, be deemed to constitute non-conformity of performance for the purposes of triggering the remedies available to the consumer in accordance with national law.

This paragraph shall apply only to contracts concluded or renewed from …*.

Article 5

Supervision and enforcement

1. National regulatory authorities shall closely monitor and ensure compliance with Articles 3 and 4, and shall promote the continued availability of non-discriminatory internet access services at levels of quality that reflect advances in technology. For those purposes, national regulatory authorities may impose requirements concerning technical characteristics, minimum quality of service requirements and other appropriate and necessary measures on one or more providers of electronic communications to the public, including providers of internet access services.

National regulatory authorities shall publish reports on an annual basis regarding their monitoring and findings, and provide those reports to the Commission and to BEREC.

* OJ: please insert the date of entry into force of this Regulation.

2. At the request of the national regulatory authority, providers of electronic communications to the public, including providers of internet access services, shall make available to that national regulatory authority information relevant to the obligations set out in Articles 3 and 4, in particular information concerning the management of their network capacity and traffic, as well as justifications for any traffic management measures applied. Those providers shall provide the requested information in accordance with the time-limits and the level of detail required by the national regulatory authority.

3. By …*, in order to contribute to the consistent application of this Regulation, BEREC shall, after consulting stakeholders and in close cooperation with the Commission, issue guidelines for the implementation of the obligations of national regulatory authorities under this Article.

4. This Article is without prejudice to the tasks assigned by Member States to the national regulatory authorities or to other competent authorities in compliance with Union law.

Article 6

Penalties

Member States shall lay down the rules on penalties applicable to infringements of Articles 3, 4 and 5 and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify the Commission of those rules and measures by 30 April 2016 and shall notify the Commission without delay of any subsequent amendment affecting them.

* OJ: please insert the date nine months after the date of entry into force of this Regulation.

Article 7

Amendments to Regulation (EU) No 531/2012

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

(1) In Article 2, paragraph 2 is amended as follows:

(a) points (i), (l) and (n) are deleted;

(b) the following points are added:

‘(r) “domestic retail price” means a roaming provider’s domestic retail per-unit charge applicable to calls made and SMS messages sent (both originating and terminating on different public communications networks within the same Member State), and to data consumed by a customer; in the event that there is no specific domestic retail per-unit charge, the domestic retail price shall be deemed to be the same charging mechanism as that applied to the customer for calls made and SMS messages sent (both originating and terminating on different public communications networks within the same Member State), and data consumed in that customer's Member State;

(s) “separate sale of regulated retail data roaming services” means the provision of regulated data roaming services provided to roaming customers directly on a visited network by an alternative roaming provider.’.

(2) In Article 3, 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. If necessary, national regulatory authorities shall impose changes to reference offers to give effect to obligations laid down in this Article.’.

(3) Article 4 is amended as follows:

(a) the title is replaced by the following:

‘Separate sale of regulated retail data roaming services’;

(b) in paragraph 1, the first subparagraph is deleted;

(c) paragraphs 4 and 5 are deleted.

(4) Article 5 is amended as follows:

(a) the title is replaced by the following:

‘Implementation of separate sale of regulated retail data roaming services’;

(b) paragraph 1 is replaced by the following:

‘1. Domestic providers shall implement the obligation related to the separate sale of regulated retail data roaming services provided for in Article 4 so that roaming customers can use separate regulated data roaming services. Domestic providers shall meet all reasonable requests for access to facilities and related support services relevant for the separate sale of regulated retail data roaming services. Access to those facilities and support services that are necessary for the separate sale of regulated retail data roaming services, including user authentication services, shall be free of charge and shall not entail any direct charges to roaming customers.’;

(c) paragraph 2 is replaced by the following:

‘2. In order to ensure consistent and simultaneous implementation across the Union of the separate sale of regulated retail data roaming services, the Commission shall, by means of implementing acts and after having consulted BEREC, adopt detailed rules on a technical solution for the implementation of the separate sale of regulated retail data roaming services. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 6(2).’;

(d) in paragraph 3, the introductory words are replaced by the following:

‘3. The technical solution to implement the separate sale of regulated retail data roaming services shall meet the following criteria:’.

(5) The following Articles are inserted:

‘*Article 6a*
Abolition of retail roaming surcharges

With effect from 15 June 2017, provided that the legislative act to be adopted following the proposal referred to in Article 19(2) is applicable on that date, roaming providers shall not levy any surcharge in addition to the domestic retail price on roaming customers in any Member State for any regulated roaming calls made or received, for any regulated roaming SMS messages sent and for any regulated data roaming services used, including MMS messages, nor any general charge to enable the terminal equipment or service to be used abroad, subject to Articles 6b and 6c.

Article 6b
Fair use

1. Roaming providers may apply in accordance with this Article and the implementing acts referred to in Article 6d a “fair use policy” to the consumption of regulated retail roaming services provided at the applicable domestic retail price level, in order to prevent abusive or anomalous usage of regulated retail roaming services by roaming customers, such as the use of such services by roaming customers in a Member State other than that of their domestic provider for purposes other than periodic travel.

Any fair use policy shall enable the roaming provider's customers to consume volumes of regulated retail roaming services at the applicable domestic retail price that are consistent with their respective tariff plans.

2. Article 6e shall apply to regulated retail roaming services exceeding any limits under any fair use policy.

Article 6c

Sustainability of the abolition of retail roaming surcharges

1. In specific and exceptional circumstances, with a view to ensuring the sustainability of its domestic charging model, where a roaming provider is not able to recover its overall actual and projected costs of providing regulated roaming services in accordance with Articles 6a and 6b, from its overall actual and projected revenues from the provision of such services, that roaming provider may apply for authorisation to apply a surcharge. That surcharge shall be applied only to the extent necessary to recover the costs of providing regulated retail roaming services having regard to the applicable maximum wholesale charges.

2. Where a roaming provider decides to avail itself of paragraph 1 of this Article, it shall without delay submit an application to the national regulatory authority and provide it with all necessary information in accordance with the implementing acts referred to in Article 6d. Every 12 months thereafter, the roaming provider shall update that information and submit it to the national regulatory authority.

3. Upon receipt of an application pursuant to paragraph 2, the national regulatory authority shall assess whether the roaming provider has established that it is unable to recover its costs in accordance with paragraph 1, with the effect that the sustainability of its domestic charging model would be undermined. The assessment of the sustainability of the domestic charging model shall be based on relevant objective factors specific to the roaming provider, including objective variations between roaming providers in the Member State concerned and the level of domestic prices and revenues. The national regulatory authority shall authorise the surcharge where the conditions laid down in paragraph 1 and this paragraph are met.

4. Within one month of receipt of an application pursuant to paragraph 2, the national regulatory authority shall authorise the surcharge unless the application is manifestly unfounded or provides insufficient information. Where the national regulatory authority considers that the application is manifestly unfounded, or considers that insufficient information has been provided, it shall take a final decision within a further period of two months, after having given the roaming provider the opportunity to be heard, authorising, amending or refusing the surcharge.

Article 6d

Implementation of fair use policy and of sustainability of the abolition of retail roaming surcharges

1. By 15 December 2016, in order to ensure consistent application of Articles 6b and 6c, the Commission shall, after having consulted BEREC, adopt implementing acts 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. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 6(2).

2. As regards Article 6b, when adopting implementing acts laying down detailed rules on the application of fair use policy, the Commission shall take into account the following:

   (a) the evolution of pricing and consumption patterns in the Member States;

   (b) the degree of convergence of domestic price levels across the Union;

   (c) the travelling patterns in the Union;

   (d) any observable risks of distortion of competition and investment incentives in domestic and visited markets.

3. As regards Article 6c, when adopting implementing acts laying down detailed rules on the methodology for assessing the sustainability of the abolition of retail roaming surcharges for a roaming provider, the Commission shall base them on the following:

   (a) the determination of the overall actual and projected costs of providing regulated retail roaming services by reference to the effective wholesale roaming charges for unbalanced traffic and a reasonable share of the joint and common costs necessary to provide regulated retail roaming services;

   (b) the determination of overall actual and projected revenues from the provision of regulated retail roaming services;

   (c) the consumption of regulated retail roaming services and the domestic consumption by the roaming provider's customers;

   (d) the level of competition, prices and revenues in the domestic market, and any observable risk that roaming at domestic retail prices would appreciably affect the evolution of such prices.

4. The Commission shall periodically review the implementing acts adopted pursuant to paragraph 1 in the light of market developments.

5. The national regulatory authority shall strictly monitor and supervise the application of the fair use policy and the measures on the sustainability of the abolition of retail roaming surcharges, taking utmost account of relevant objective factors specific to the Member State concerned and of relevant objective variations between roaming providers. Without prejudice to the procedure set out in Article 6c(3), the national regulatory authority shall in a timely manner enforce the requirements of Articles 6b and 6c and the implementing acts adopted pursuant to paragraph 1 of this Article. The national regulatory authority may at any time require the roaming provider to amend or discontinue the surcharge if it does not comply with Article 6b or 6c. The national regulatory authority shall inform the Commission annually concerning the application of Articles 6b and 6c, and of this Article.

Article 6e

Provision of regulated retail roaming services

1. Without prejudice to the second subparagraph, where a roaming provider applies a surcharge for the consumption of regulated retail roaming services in excess of any limits under any fair use policy, it shall meet the following requirements (excluding VAT):

   (a) any surcharge applied for regulated roaming calls made, regulated roaming SMS messages sent and regulated data roaming services shall not exceed the maximum wholesale charges provided for in Articles 7(2), 9(1) and 12(1), respectively;

(b) the sum of the domestic retail price and any surcharge applied for regulated roaming calls made, regulated roaming SMS messages sent or regulated data roaming services shall not exceed EUR 0,19 per minute, EUR 0,06 per SMS message and EUR 0,20 per megabyte used, respectively;

(c) any surcharge applied for regulated roaming calls received shall not exceed the weighted average of maximum mobile termination rates across the Union set out in accordance with paragraph 2.

Roaming providers shall not apply any surcharge to a regulated roaming SMS message received or to a roaming voicemail message received. This shall be without prejudice to other applicable charges such as those for listening to such messages.

Roaming providers shall charge roaming calls made and received on a per second basis. Roaming providers may apply an initial minimum charging period not exceeding 30 seconds to calls made. Roaming providers shall charge their customers for the provision of regulated data roaming services on a per-kilobyte basis, except for MMS messages, which may be charged on a per-unit basis. In such a case, the retail charge which a roaming provider may levy on its roaming customer for the transmission or receipt of a roaming MMS message shall not exceed the maximum retail charge for regulated data roaming services set out in the first subparagraph.

During the period referred to in Article 6f(1), this paragraph shall not preclude offers which provide roaming customers, for a per diem or any other fixed periodic charge, with a certain volume of regulated roaming services consumption on condition that the consumption of the full amount of that volume leads to a unit price for regulated roaming calls made, calls received, SMS messages sent and data roaming services which does not exceed the respective domestic retail price and the maximum surcharge as set out in the first subparagraph of this paragraph.

2. By 31 December 2015, the Commission shall, after consulting BEREC and subject to the second subparagraph of this paragraph, adopt implementing acts setting out the weighted average of maximum mobile termination rates referred to in point (c) of the first subparagraph of paragraph 1. The Commission shall review those implementing acts annually. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 6(2).

The weighted average of maximum mobile termination rates shall be based on the following criteria:

(a) the maximum level of mobile termination rates imposed in the market for wholesale voice call termination on individual mobile networks by the national regulatory authorities in accordance with Articles 7 and 16 of the Framework Directive and Article 13 of the Access Directive, and

(b) the total number of subscribers in Member States.

3. Roaming providers may offer, and roaming customers may deliberately choose, a roaming tariff other than one set in accordance with Articles 6a, 6b, 6c and paragraph 1 of this Article, by virtue of which roaming customers benefit from a different tariff for regulated roaming services 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.

Without prejudice to the first subparagraph, roaming providers shall apply a tariff set in accordance with Articles 6a and 6b, and paragraph 1 of this Article to all existing and new roaming customers automatically.

Any roaming customer may, at any time, request to switch to or from a tariff set in accordance with Articles 6a, 6b, 6c and paragraph 1 of this Article. When roaming customers deliberately choose to switch from or back to a tariff set in accordance with Articles 6a, 6b, 6c and paragraph 1 of this Article, any switch shall be made within one working day of receipt of the request, shall be free of charge and shall not entail conditions or restrictions pertaining to elements of the subscriptions other than roaming. Roaming providers may delay a switch until the previous roaming tariff has been effective for a minimum specified period not exceeding two months.

4. Roaming providers shall ensure that a contract which includes any type of regulated retail roaming service specifies the main characteristics of that regulated retail roaming service provided, including in particular:

(a) the specific tariff plan or tariff plans and, for each tariff plan, the types of services offered, including the volumes of communications;

(b) any restrictions imposed on the consumption of regulated retail roaming services provided at the applicable domestic retail price level, in particular quantified information on how any fair use policy is applied by reference to the main pricing, volume or other parameters of the provided regulated retail roaming service concerned.

Roaming providers shall publish the information referred to in the first subparagraph.

Article 6f

Transitional retail roaming surcharges

1. From 30 April 2016 until 14 June 2017, roaming providers may apply a surcharge in addition to the domestic retail price for the provision of regulated retail roaming services.

2. During the period referred to in paragraph 1 of this Article, Article 6e shall apply *mutatis mutandis*.'.

(6) Articles 8, 10 and 13 are deleted.

(7) Article 14 is amended as follows:

(a) in paragraph 1, the second subparagraph is replaced by the following:

‘That basic personalised pricing information shall be expressed in the currency of the home bill provided by the customer’s domestic provider and shall include information on:

(a) any fair use policy that the roaming customer is subject to within the Union and the surcharges which apply in excess of any limits under that fair use policy; and

(b) any surcharge applied in accordance with Article 6c.’;

(b) in paragraph 1, the sixth subparagraph is replaced by the following:

‘The first, second, fourth and fifth subparagraphs, with the exception of the reference to the fair use policy and the surcharge applied in accordance with Article 6c, shall also apply to voice and SMS roaming services used by roaming customers travelling outside the Union and provided by a roaming provider.’;

(c) the following paragraph is inserted:

‘2a. The roaming provider shall send a notification to the roaming customer when the applicable fair use volume of regulated voice, or SMS, roaming services is fully consumed or any usage threshold applied in accordance with Article 6c is reached. That notification shall indicate the surcharge that will be applied to any additional consumption of regulated voice, or SMS, roaming services by the roaming customer. Each customer shall have the right to require the roaming provider to stop sending such notifications and shall have the right, at any time and free of charge, to require the roaming provider to provide the service again.’;

(d) paragraph 3 is replaced by the following:

‘3. Roaming providers shall provide all customers 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.

Roaming providers shall send a reminder at reasonable intervals thereafter to all customers who have opted for another tariff.’.

(8) Article 15 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. An automatic message from the roaming provider shall inform the roaming customer that the latter is using regulated data roaming services, and provide basic personalised tariff information on the charges (in the currency of the home bill provided by the customer’s domestic provider) 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.

That basic personalised tariff information shall include information on:

(a) any fair use policy that the roaming customer is subject to within the Union and the surcharges which apply in excess of any limits under that fair use policy; and

(b) any surcharge applied in accordance with Article 6c.

The 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.

A customer who has notified his roaming provider that he does not require the automatic tariff information shall have the right at any time and free of charge to require the roaming provider to provide this service again.';

(b) the following paragraph is inserted:

'2a. The roaming provider shall send a notification when the applicable fair use volume of regulated data roaming service is fully consumed or any usage threshold applied in accordance with Article 6c is reached. That notification shall indicate the surcharge that will be applied to any additional consumption of regulated data roaming services by the roaming customer. Each customer shall have the right to require the roaming provider to stop sending such notifications and shall have the right, at any time and free of charge, to require the roaming provider to provide the service again.';

(c) in paragraph 3, the first subparagraph is replaced by the following:

‘3. Each roaming provider shall grant to all their roaming customers the opportunity to opt deliberately and free of charge for a facility which provides in a timely manner information on the accumulated consumption expressed in volume or in the currency in which the roaming customer is billed for regulated data roaming services and which guarantees that, without the customer’s explicit consent, the accumulated expenditure for regulated data roaming services over a specified period of use, excluding MMS billed on a per-unit basis, does not exceed a specified financial limit.’;

(d) in paragraph 6, the first subparagraph is replaced by the following:

‘6. This Article, with the exception of paragraph 5, of the second subparagraph of paragraph 2 and of paragraph 2a, and subject to the second and third subparagraph of this paragraph, shall also apply to data roaming services used by roaming customers travelling outside the Union and provided by a roaming provider.’.

(9) Article 16 is amended as follows:

(a) in paragraph 1, the following subparagraph is added:

‘National regulatory authorities shall strictly monitor and supervise roaming providers availing themselves of Article 6b, 6c and 6e(3).’;

(b) paragraph 2 is replaced by the following:

‘2. National regulatory authorities 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.’.

(10) Article 19 is replaced by the following:

'*Article 19*

Review

1. By …*, the Commission shall initiate a review of the wholesale roaming market with a view to assessing measures necessary to enable abolition of retail roaming surcharges by 15 June 2017. The Commission shall review, inter alia, the degree of competition in national wholesale markets, and in particular shall assess the level of wholesale costs incurred and wholesale charges applied, and 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 developments in competition in the retail roaming markets and any observable risks of distortion of competition and investment incentives in domestic and visited markets. In assessing measures necessary to enable the abolition of retail roaming surcharges, the Commission shall take into account the need to ensure that the visited network operators are able to recover all costs of providing regulated wholesale roaming services, including joint and common costs. The Commission shall also take into account the need 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.

* OJ: please insert the date of entry into force of this Regulation.

2. By 15 June 2016, the Commission shall submit a report to the European Parliament and to the Council on the findings of the review referred to in paragraph 1.

That report shall be accompanied by an appropriate legislative proposal preceded by a public consultation, to amend the wholesale charges for regulated roaming services set out in this Regulation or to provide for another solution to address the issues identified at wholesale level with a view to abolishing retail roaming surcharges by 15 June 2017.

3. In addition, the Commission shall submit a report to the European Parliament and to the Council every two years after the submission of the report referred to in paragraph 2. Each report 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, 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 has produced results in the development of competition in the internal market for regulated roaming services.

4. 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 regulated 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.

On the basis of collected data, BEREC shall also 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 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 8

Amendment to Directive 2002/22/EC

In Article 1 of Directive 2002/22/EC, paragraph 3 is replaced by the following:

'3. National measures regarding end-users' access to, or use of, services and applications through electronic communications networks shall respect the fundamental rights and freedoms of natural persons, including in relation to privacy and due process, as defined in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.'.

Article 9

Review clause

By 30 April 2019, and every four years thereafter, the Commission shall review Articles 3, 4, 5 and 6 and shall submit a report to the European Parliament and to the Council thereon, accompanied, if necessary, by appropriate proposals with a view to amending this Regulation.

Article 10

Entry into force and transitional provisions

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

2. It shall apply from 30 April 2016, except for the following:

   (a) In the event that the legislative act to be adopted following the proposal referred to in Article 19(2) of Regulation (EU) No 531/2012 is applicable on 15 June 2017, point 5 of Article 7 of this Regulation, as regards Articles 6a to 6d of Regulation (EU) No 531/2012, point 7(a) to (c) of Article 7 of this Regulation and point 8(a), (b) and (d) of Article 7 of this Regulation shall apply from that date.

   In the event that that legislative act is not applicable on 15 June 2017, point 5 of Article 7 of this Regulation, as regards Article 6f of Regulation (EU) No 531/2012, shall continue to apply until that legislative act becomes applicable.

In the event that that legislative act becomes applicable after 15 June 2017, point 5 of Article 7 of this Regulation, as regards Articles 6a to 6d of Regulation (EU) No 531/2012, point 7(a) to (c) of Article 7 of this Regulation and point 8(a), (b) and (d) of Article 7 shall apply from the date of application of that legislative act;

(b) the conferral of implementing powers on the Commission in point 4(c) of Article 7 of this Regulation and in point 5 of Article 7 of this Regulation, as regards Articles 6d and 6e(2) of Regulation (EU) No 531/2012, shall apply from …*;

(c) Article 5(3) shall apply from …*;

(d) point 10 of Article 7 of this Regulation shall apply from …*.

3. Member States may maintain until 31 December 2016 national measures, including self-regulatory schemes, in place before …* that do not comply with Article 3(2) or (3). Member States concerned shall notify those measures to the Commission by 30 April 2016.

* OJ: please insert the date of the entry into force of this Regulation.

4. The provisions of Commission Implementing Regulation (EU) No 1203/2012[1] relating to the technical modality for the implementation of accessing local data roaming services on a visited network shall continue to apply for the purposes of separate sale of regulated retail data roaming services until the adoption of the implementing act referred to in point 4(c) of Article 7 of this Regulation.

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

Done at Strasbourg,

For the European Parliament	*For the Council*
The President	*The President*

[1] Commission Implementing Regulation (EU) No 1203/2012 of 14 December 2012 on the separate sale of regulated retail roaming services within the Union (OJ L 347, 15.12.2012, p. 1).