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ADD 1 + ADD 2
Subject : Proposal for a Regulation of the European Parliament and of the Council on
roaming on public mobile networks within the Community and amending
Directive 2002/21/EC on a common regulatory framework for electronic
communications networks and services
- Political agreement

1. On 18 July 2006, the Commission transmitted to the Council the proposal mentioned in the subject. The objective of this proposal was to amend the existing regulatory framework for electronic communications to provide the necessary legal basis for effective and timely action to bring about substantial reductions in the level of mobile roaming charges across the Community in a harmonised manner.
2. The proposal is based on Article 95 of the Treaty.
3. The Economic and Social Committee delivered its Opinion on 31 October 2006.

4. On 18 May 2007, the Permanent Representatives Committee examined a compromise package proposed by the Presidency as a result of informal contacts that had taken place between the Council, the European Parliament and the Commission. As the result of this examination, a letter was sent to the European Parliament with a compromise text annexed.
5. The European Parliament adopted 1 compromise amendment to the Commission proposal in its first reading on 23 May 2007. The result of the vote in the European Parliament corresponds to the compromise that was agreed between the three institutions.
6. On 29 May 2007, the Permanent Representatives Committee approved the result of the first reading of the European Parliament as set out in annex to this document. It is to be noted that the FR delegation has a parliamentary scrutiny reserve on this file.

The Council is asked to give its political agreement to the text of the Regulation in view of its adoption and publication in the Official Journal after final verification by the legal/linguist experts.

Roaming on public mobile networks *I**

European Parliament legislative resolution of 23 May 2007 on the proposal for a regulation of the European Parliament and of the Council on roaming on public mobile networks within the Community and amending Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (COM(2006)0382 – C6-0244/2006 – 2006/0133(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2006)0382)¹,
 - having regard to the opinion of the European Economic and Social Committee,
 - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0244/2006),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, Research and Energy and the opinions of the Committee on Economic and Monetary Affairs, the Committee on the Internal Market and Consumer Protection and the Committee on Culture and Education (A6-0155/2007),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

¹ Not yet published in OJ.

Position of the European Parliament adopted at first reading on 23 May 2007 with a view to the adoption of Regulation (EC) No .../2007 of the European Parliament and of the Council on roaming on public mobile networks within the Community and amending Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the *Commission*,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the procedure laid down in Article 251 of the Treaty³,

Whereas:

² OJ C , , p. .

³ *Position of the European Parliament of 23.5.2007.*

- (1) The high level of the prices payable by users of public mobile telephone networks, *such as students, business travellers and tourists*, when using their mobile telephones when travelling abroad within the Community is a matter of concern for national regulatory authorities, *as well as for consumers and the European Institutions. The excessive* retail charges *are resulting* from high wholesale charges levied by the foreign host network operator and also, in many cases, from high retail mark-ups charged by the customer's own network operator. *Reductions* in wholesale charges *are* often not passed *on* to the retail customer. *Although some operators have recently introduced tariff schemes that offer customers more favourable conditions and lower prices, there is still evidence that the relationship between costs and prices is not such as would prevail in fully competitive markets. The creation of a European social, educational and cultural area based on the mobility of individuals should facilitate communication between people in order to build a real "Europe for Citizens".*
- (2) Directive of the European Parliament and of the Council 2002/21/EC of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)⁴; 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)⁵; 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)⁶; 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)⁷; and 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 sector⁸, together "the 2002 regulatory framework for electronic communications", aimed at creating an internal market for electronic communications within the Community while ensuring a high level of consumer protection through enhanced competition.

⁴ OJ L 108 of 24.4.2002, p 33.

⁵ OJ L 108 of 24.4.2002, p. 7.

⁶ OJ L 108 of 24.4.2002, p. 21.

⁷ OJ L 108 of 24.4.2002, p. 51.

⁸ OJ L 201 of 31.7.2002, p. 37.

- (3) *This Regulation is not an isolated measure, but complements and supports, insofar as Community-wide roaming is concerned, the rules provided for by the 2002 regulatory framework for electronic communications. The framework has not provided national regulatory authorities with sufficient tools to take effective and decisive action with regard to the pricing of roaming services within the Community, and thus fails to ensure the smooth functioning of the internal market for roaming services. This Regulation is an appropriate means of correcting this situation.*
- (4) The 2002 regulatory framework for electronic communications draws on the principle that *ex ante* regulatory obligations should only be imposed where there is not effective competition, providing⁹ for a process of periodic market analysis and review of obligations by national regulatory authorities, leading to the imposition of *ex ante* obligations on operators designated as having significant market power. The elements constituting this process include the definition of relevant markets in accordance with the Commission's Recommendation of 11 February 2003 on relevant product and service markets within the electronic communications sector¹⁰ (the Recommendation), the analysis of the defined markets in accordance with the Commission's Guidelines¹¹, the designation of operators with significant market power and the imposition of *ex ante* obligations on operators so designated.

⁹ See in particular Articles 14 to 16 of the Framework Directive, Articles 7 and 8 of the Access Directive and Articles 16 and 17 of the Universal Service Directive.

¹⁰ Commission Recommendation of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services - C(2003) 497 (OJ L 114, 8.5.2003, p. 45).

¹¹ Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services (OJ C 165, 11.7.2002, p. 6).

- (5) The Recommendation identifies as a relevant market susceptible to *ex ante* regulation the wholesale national market for **Community-wide** roaming on public mobile networks¹². However, the work undertaken by the national regulatory authorities (both individually and in the European Regulators Group) in analysing the wholesale national markets for **Community-wide** roaming has demonstrated that it has not yet been possible for a national regulatory authority to address effectively the high level of wholesale **Community-wide** roaming charges because of the difficulty in identifying undertakings with significant market power in view of the specific circumstances of international roaming, including its cross-border nature.
- (6) As regards the retail provision of international roaming services on the other hand, the Recommendation does not identify any retail market for international roaming as a relevant market, due (among other things) to the fact that international roaming services at retail level are not purchased independently but constitute only one element of a broader retail package purchased by customers from their home provider.
- (7) In addition, the national regulatory authorities responsible for safeguarding and promoting the interests of mobile customers normally resident within their territory are not able to control the behaviour of the operators of the visited network, situated in other Member States, on whom those customers depend when using international roaming services. This limitation would also diminish the effectiveness of measures taken by Member States based on their residual competence to adopt consumer protection rules.
- (8) Accordingly, there is pressure for Member States to take measures to address the level of international roaming charges, but the mechanism for *ex ante* regulatory intervention by national regulatory authorities provided by the 2002 regulatory framework for electronic communications has not proved sufficient to enable those authorities to act decisively in the consumers' interest in this specific area.

¹² Market 17 in the Annex.

- (9) Furthermore, the European Parliament's resolution of 1 December 2005 on European electronic communications regulation and markets 2004¹³ called on the Commission to develop new initiatives to reduce the high costs of cross-border mobile telephone traffic, while the European Council of 23-24 March 2006 concluded that focused, effective and integrated information and communication technology (ICT) policies both at European and national level are essential to achieving the renewed Lisbon Strategy's¹⁴ goals of economic growth and productivity and noted in this context the importance for competitiveness of reducing roaming charges.
- (10) *The* 2002 regulatory framework for electronic communications, on the basis of considerations apparent at that time, ***was aimed at removing*** all *barriers* to trade ***between Member States*** in the area that it ***harmonised, inter alia, measures which affect roaming charges. However, this should not*** prevent the adaptation of the harmonised rules in step with other considerations in order to find the most effective means of achieving a high level of consumer protection whilst improving the conditions for the functioning of the internal market.
- (11) It is therefore necessary to amend the 2002 regulatory framework for electronic communications to allow for a departure from the rules otherwise applicable, namely that prices for service offerings should be determined by commercial agreement in the absence of significant market power, and thereby to accommodate the introduction of complementary regulatory obligations which reflect the specific characteristics of ***Community-wide*** roaming services.
- (12) The retail and wholesale roaming markets exhibit unique characteristics which justify exceptional measures which go beyond the mechanisms otherwise available under the 2002 regulatory framework *for electronic communications*.

¹³ OJ C 285 E, 22.11.2006, p. 143.

¹⁴ Communication to the Spring European Council, Working together for growth and jobs, A new start for the Lisbon Strategy - COM(2005)0024, 2.2.2005 - and European Council Presidency Conclusions 22-23 March 2005.

- (13) Regulatory obligations should be imposed at both retail and wholesale level to protect the interests of roaming customers, since experience has shown that reductions in wholesale prices for **Community-wide** roaming services may not be reflected in lower retail prices for roaming, due to the absence of incentives to do so. On the other hand, action to reduce the level of retail prices without addressing the level of the wholesale costs associated with the provision of these services could risk disrupting the orderly functioning of the **Community-wide** roaming market.
- (14) The resulting obligations should take effect as soon as possible, while providing the operators concerned with a reasonable period to adapt their prices and service *offers* to ensure compliance, and apply directly in all Member States.
- (15) A common **approach, should** be employed for ensuring that users of **terrestrial** public mobile telephone networks when travelling within the Community do not pay excessive prices for **Community-wide** roaming voice services when making calls or receiving voice calls, thereby achieving a high level of consumer protection while safeguarding competition between mobile operators **and preserving both incentives for innovation and consumer choice**. In view of the cross-border nature of the services concerned, a common **approach** is needed so that mobile operators are faced with a single coherent regulatory framework based on objectively established criteria.
- (16) The most effective and proportionate **approach to** regulating the level of prices for making **and receiving intra-Community** roaming calls in accordance with the above considerations is the setting at Community level of **a maximum average per-minute charge at wholesale level and limiting charges at retail level, by introducing a Eurotariff. The wholesale average charge applies between any pair of operators within the Community over a twelve months period.**
- (17) **The Eurotariff should be set at a level which guarantees a sufficient margin to operators and encourages competitive roaming offers at lower rates. Providers should actively offer a Eurotariff to all their roaming customers, free of charge, and in a clear and transparent way.**

- (18) This **regulatory approach** should ensure that retail charges for **Community-wide** roaming provide a more reasonable reflection of the underlying costs involved in the provision of the service than has been the case. **The maximum Eurotariff that may be offered to roaming customers should therefore reflect a reasonable margin over the wholesale cost of providing a roaming service**, whilst allowing operators the freedom to compete by differentiating their offerings and adapting their pricing structures to market conditions and consumer preference. **This regulatory approach should not apply to value added services.**
- (19) The **regulatory approach** should be simple to implement and monitor in order to minimise the administrative burden both for the operators which are affected by its requirements and for the national regulatory authorities charged with its supervision and enforcement. **It should also be transparent and immediately understandable to all mobile customers within the Community. Furthermore it should provide certainty and predictability to operators providing wholesale and retail roaming services. It is therefore appropriate to specify directly in this Regulation the level in monetary terms of the maximum per-minute charges at retail and wholesale level.**
- (20) **The maximum average per-minute charge at wholesale level so specified should take account of the different elements involved in the making of a Community-wide roaming call, in particular the cost of originating and terminating calls in mobile networks and including overheads, signalling and transit. The most appropriate benchmark for call origination and for call termination is the average mobile termination rate for mobile network operators in the Community, based on information provided by the national regulatory authorities and published by the Commission. The maximum average per-minute charge established by this Regulation should therefore be determined taking account of the average mobile termination rate, which offers a benchmark for the costs involved. The maximum average per-minute charge at wholesale level should be reduced annually to take account of reductions in mobile termination rates imposed by national regulatory authorities from time to time.**

- (21) The ***Eurotariff applicable*** at retail level should provide roaming customers with the assurance that they will not be charged an excessive price when making ***or receiving*** a regulated roaming call, whilst leaving the home operators sufficient margin to differentiate the products they offer to customers.
- (22) ***All consumers should have the option of choosing a simple roaming tariff which will not exceed capped regulated rates without additional charges or preconditions. A reasonable margin between wholesale costs and retail prices ensures the operators to cover all their specific roaming costs at retail level including appropriate shares of marketing costs and handset subsidisations and leaves them an adequate residual to yield a reasonable return. A Eurotariff is an appropriate means to provide both the customer with protection and the operator with flexibility. In line with the wholesale level the maximum levels of the Eurotariff shall be decreased annually.***
- (23) ***New roaming customers should be fully informed of the range of tariffs that exist for roaming within the Community, including the tariffs which are compliant with the Eurotariff. Existing roaming customers must be given the opportunity to make their individual choice for a new tariff compliant with the Eurotariff or any other roaming tariff within a certain time frame after the entry into force of this Regulation. For existing roaming customers who have not made their choice within this time frame it is appropriate to distinguish between those who had already opted for a specific roaming tariff or package before the entry into force of this Regulation and those who had not selected such specific roaming tariffs. Customers falling within the latter category should be placed automatically on a tariff that is compliant with the requirements of this Regulation. Roaming customers who already benefit from specific roaming tariffs or packages that suit their individual requirements and which they have chosen on that basis should remain on their previously selected tariff or package if, after having been reminded of their current tariff conditions, they fail to express their choice within the relevant time period. Such specific roaming tariffs or packages may include e.g. roaming flat-rates, non-public tariffs, tariffs with additional fixed roaming charges, tariffs with per-minute charges lower than the Eurotariff or set-up charges.***

- (24) Providers of **Community-wide** roaming services for calls made *and received* while roaming abroad as covered by this Regulation should have a period within which to adjust their retail *prices* to comply with *the limits laid down* in this *Regulation*.
- (25) *Similarly, providers of wholesale Community-wide roaming services should have an adaptation period of two months to comply with the limits laid down in this Regulation.*
- (26) *Since this Regulation provides that the directives making up the 2002 regulatory framework for electronic communications are to be without prejudice to any specific measure adopted for the regulation of Community-wide roaming charges for mobile voice telephony calls, and since providers of Community-wide roaming services may be required by this Regulation to make changes to their retail roaming tariffs in order to comply with its requirements, such changes should not trigger any right under national laws transposing the 2002 regulatory framework for mobile customers to withdraw from their contracts.*
- (27) *This Regulation should not prejudice innovative offers to consumers which are more advantageous than the maximum Eurotariff as defined in this Regulation, but should in fact encourage innovative offers to roaming customers at lower rates. This Regulation does not require roaming charges to be reintroduced in cases where they have been abolished altogether, nor does it require existing roaming charges to be increased to the level of the limits set out in this Regulation.*
- (28) *Home providers may offer a fair-use, all-inclusive, monthly flat-rate to which no charge limits apply. This flat-rate could cover Community-wide roaming voice and/or data communication services (including Short Message Service (SMS) and Multimedia Messaging Service (MMS)) within the Community.*
- (29) The pricing requirements in this Regulation should apply regardless of whether roaming customers have a pre-paid or a post-paid contract with their home provider, *and irrespective of whether the home provider has its own network, is a mobile virtual network operator or a reseller of mobile voice telephony services*, to ensure that all users of mobile voice telephony may benefit from its provisions.

- (30) *Where Community providers of mobile telephony services find the benefits of interoperability and end-to-end connectivity for their customers jeopardised by the termination, or threat of termination, of their roaming arrangements with mobile network operators in other Member States, or are unable to provide their customers with service in another Member State as a result of a lack of agreement with at least one wholesale network provider, national regulatory authorities should make use, where necessary, of the powers under Article 5 of Directive 2002/19/EC to ensure adequate access and interconnection in order to guarantee such end-to-end connectivity and the interoperability of services, taking into account the objectives in Article 8 of Directive 2002/21/EC), in particular the creation of a fully functioning single market for electronic communications services.*
- (31) *In order to improve the transparency of retail prices for making and receiving **regulated** roaming calls within the Community and to help roaming customers make decisions on the use of their mobile telephones while abroad, providers of mobile telephony services should enable their roaming customers to easily obtain information **free of charge** on the roaming charges applicable to them **when making or receiving voice calls** in a visited Member State. Moreover, providers should give their customers, on request and free of charge, additional information on the per-minute or per-unit data charges (including VAT) for the making or receiving of voice calls and also for the sending and receiving of SMS, MMS and other data communication services in the visited Member State.*
- (32) *Transparency also requires that providers furnish information on roaming charges in particular on the Eurotariff and the all-inclusive flat-rate, should they offer one, when subscriptions are taken out and each time there is a change in roaming charges. Home providers should provide information on roaming charges by appropriate means such as invoices, internet, TV advertisements or direct mail. Home providers should ensure that all their roaming customers are aware of the availability of regulated tariffs and should send a clear and unbiased communication to these customers describing the conditions of the Eurotariff and the right to switch to and from it.*

- (33) The national regulatory authorities which are responsible for carrying out tasks under the 2002 regulatory framework for electronic communications should have the powers needed to supervise and enforce the obligations in this Regulation within their territory. They should also monitor developments in the pricing of voice and data services for mobile customers when roaming within the Community *including, where appropriate*, the specific costs related to roaming calls made *and received* in the outermost regions of the Community and the necessity to ensure that these costs can be adequately recovered on the wholesale market, *and that traffic steering techniques are not used to limit choice to the detriment of customers*. They should ensure that up-to-date information on the application of this Regulation is made available to *interested parties and publish the results of such monitoring every six months*. *Information should be provided on corporate, post-paid and pre-paid customers separately.*
- (34) *In-country roaming in the outermost regions of the Community where mobile telephony licences are distinct from those issued in respect of the rest of the national territory could benefit from rate reductions equivalent to those practised on the Community roaming market. The implementation of this Regulation will not give rise to a less favourable pricing treatment for customers using in-country roaming services as opposed to customers using Community-wide roaming services. To this end, the national authorities may take additional measures consistent with Community law.*
- (35) *In view of the fact that, in addition to voice telephony, new mobile data communication services are gaining ever more ground, this Regulation should make it possible to monitor market developments in these services too. The Commission, therefore, should also monitor the market for roaming data communication services, including SMS and MMS.*
- (36) Member States should provide for a system of sanctions to be applied in the event of breach of the provisions of this *Regulation*.

- (37) *Since* the objectives of the proposed action, to establish a common mechanism to ensure that users of public mobile telephone networks when travelling within the Community do not pay excessive prices for **Community-wide** roaming services when making or receiving voice calls, thereby achieving a high level of consumer protection while safeguarding competition between mobile operators, cannot be achieved by the Member States in a secure, harmonised and timely manner and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in the same Article, this Regulation does not go beyond what is necessary in order to achieve those *objectives*.
- (38) *The common approach should be established for a period of three years. This Regulation may, in the light of a review to be carried out by the Commission, be extended or amended by a legal act adopted by the European Parliament and the Council on the basis of a proposal of the Commission. The Commission should review the effectiveness of the Regulation and the contribution which it makes to the implementation of the regulatory framework and the smooth functioning of the internal market and also examine the impact of the Regulation on the smaller mobile telephony providers in the Community and their position in the Community-wide roaming market,*

HAVE ADOPTED THIS REGULATION:

Article 1
Subject matter and Scope

1. This Regulation introduces a common ***approach to*** ensuring that users of public mobile telephone networks when travelling within the Community do not pay excessive prices for ***Community-wide*** roaming services when making calls and receiving calls, thereby ***contributing to the smooth functioning of the internal market while*** achieving a high level of consumer protection, safeguarding competition between mobile operators ***and preserving both incentives for innovation and consumer choice***. It lays down rules on the charges that may be levied by mobile operators for the provision of international roaming services for voice calls originating and terminating within the Community and applies both to charges levied between network operators at wholesale level and to charges levied *by home providers* at retail level.
2. ***This Regulation also lays down rules aimed at increasing price transparency and improving the provision of information on charges to users of Community-wide roaming services.***
3. This Regulation constitutes a specific measure within the meaning of Article 1(5) of Directive 2002/21/EC as amended by this Regulation.
4. ***The charge limits set out in this Regulation are expressed in Euro. Where charges governed by Articles 3 and 4 are denominated in other currencies, the initial limits pursuant to those Articles shall be determined in those currencies by applying the reference exchange rates prevailing on the date of the entry into force of this Regulation, as published by the European Central Bank in the Official Journal of the European Union. For the purposes of the subsequent reductions in those limits provided for in Articles 3(1) and 4(2) the revised values shall be converted by applying the reference exchange rates so published one month preceding the date of entry into effect of the revised values.***

Article 2

Definitions

1. For the purposes of this Regulation, the definitions set out in Article 2 of Directive 2002/21/EC, Article 2 of Directive 2002/19/EC and Article 2 of Directive 2002/22/EC shall apply.
2. In addition to the definitions referred to in paragraph 1, the following definitions shall apply:
 - (a) **"Eurotariff" means any tariff not exceeding the maximum charge, provided for in Article 4, which a home provider may levy for the provision of regulated roaming calls in compliance with that Article;**
 - (b) "home provider" means **an** undertaking that provides **a** roaming customer with terrestrial public mobile telephony services **either via its own network or as a mobile virtual network operator or reseller;**
 - (c) "home network" means **a** terrestrial public mobile network located within a Member State and used by the home provider for the provision of terrestrial public mobile telephony services to the roaming customer;
 - (d) **"Community-wide roaming"** means the use of a mobile telephone or other device by a roaming customer to make or receive **intra-Community** calls while **in a** Member State **other than that** in which **his** home network is located, by means of arrangements between the operator of the home network and the operator of the visited network;
 - (e) "regulated roaming call" means a mobile voice telephony call made by a roaming customer, originating on a visited network and terminating on a public telephone network within the Community **or received by a roaming customer, originating on a public telephone network within the Community and terminating on a visited network;**

- (f) "roaming customer" means a customer of a provider of terrestrial public mobile telephony services, by means of a terrestrial public mobile network situated in the Community, ***whose contract or arrangement with their home provider permits the use of*** a mobile telephone or other device to make or to receive calls on a visited network by means of arrangements between the operator of the home network and the operator of the visited network;
- (g) "visited network" means a terrestrial public mobile telephony network situated in a Member State other than that of the home network and permitting a roaming customer to make or receive calls by reason of arrangements with the operator of the home network.

Article 3

Wholesale charges for the making of regulated roaming calls

1. The ***average*** wholesale charge that the operator of a visited network may levy from the operator of ***a*** roaming customer's home network for the provision of a regulated roaming call ***originating on that visited network, inclusive*** inter alia ***of*** origination, transit and termination ***costs***, shall not exceed ***EUR 0.30 per minute***.
2. ***The average wholesale charge shall apply between any pair of operators and shall be calculated over a twelve month period or any such shorter period as may remain before the expiry of this Regulation. The maximum average wholesale charge shall decrease to EUR 0.28 and EUR 0.26 after 12 and 24 months respectively.***
3. ***The average wholesale charge referred to in paragraph 1 shall be calculated by dividing the total wholesale roaming revenue received by the total number of wholesale roaming minutes sold for the provision of wholesale roaming calls within the Community by the relevant operator over the relevant period. The operator of the visited network is permitted to make a distinction between peak and off-peak charges.***

Article 4

Retail charges *for regulated* roaming calls

1. Home providers shall make available and actively offer to all their roaming customers, clearly and transparently, a Eurotariff as provided for in paragraph 2. The Eurotariff shall not entail any associated subscription or other fixed or recurring charges and may be combined with any retail tariff.

When making this offer home providers shall remind any of their roaming customers who, before the entry into force of this Regulation, had chosen a specific roaming tariff or package of the conditions applicable to that tariff or package.

2. The retail charge (excluding VAT) of a Eurotariff which a home provider may levy from its roaming customer for the provision of a regulated roaming call *may vary for any roaming call but shall not exceed EUR 0.49 per minute for any call made or EUR 0.24 per minute for any call received. The price ceiling for calls made shall automatically be reduced to EUR 0.46 and EUR 0.43, and for calls received to EUR 0.22 and EUR 0.19 12 and 24 months respectively after the date falling two months from the entry into force of this Regulation.*

3. All roaming customers shall be offered a tariff as set out in paragraph 2.

All existing roaming customers must be given the opportunity, within one month following the entry into force of this Regulation, to opt deliberately for this tariff or any other roaming tariff, and must make their choice known to their home provider within a period of two months. The requested tariff must be activated no later than one month after receipt by the home provider of the customer's request.

Roaming customers who within that period of two months have not made their choice shall automatically be provided with a Eurotariff as set out in paragraph 2.

However, roaming customers who, before the entry into force of this Regulation, had already made a deliberate choice of a specific roaming tariff or package, other than the roaming tariff on which they would be placed in the absence of such choice, and who fail to express a choice pursuant to this paragraph shall remain on their previously chosen tariff or package.

4. All roaming customers may request, at any point after the process set out in paragraph 3 has expired, to switch to or from a Eurotariff within one working day of the receipt of the request. Any switch must be made free of charge and shall not entail conditions or restrictions pertaining to other elements of the subscription. The home provider may delay the switch until the previous roaming tariff has been effective for a minimum specified period. That minimum period may not exceed three months.

Article 5

Timing of application of *Articles 3 and 6*

1. The obligations in Article 3 shall take effect two months after the entry into force of this Regulation.

2. The obligations in Article 6(1) and (2) shall take effect three months after the entry into force of this Regulation.

Article 6

Transparency of retail charges

1. To alert a roaming customer to the fact that he will be subject to roaming charges when making or receiving a call, except when the customer has notified his home provider that he does not require this service, each home provider shall provide the customer, automatically, without undue delay and free of charge, when he enters another Member State, with personalised basic pricing information on the roaming charges (including VAT) that apply to the making and receipt of calls by that customer in the visited Member State by means of a Message Service.

The personalised basic pricing information referred to in this paragraph shall include the maximum prices the customer may be subject to under his tariff scheme for making calls within the visited country and back home, as well as for calls received. It shall also include the free of charge number referred to in paragraph 2 for more detailed information.

A customer who has given notice that he does not require the automatic Message Service shall have the right at any time and free of charge to require the home provider to provide the service again.

Home providers shall offer blind or partially-sighted customers the information described in this paragraph automatically, by voice call, free of charge, if they so request.

2. *Additional to paragraph 1, the customer shall have the right to request and receive, free of charge, more detailed personalised pricing information on the applicable roaming charges of voice calls, SMS, MMS and other data communication services, by means of a mobile voice call or by SMS. Such request shall be to a free of charge number designated for this purpose by the home provider.*

3. *Home providers shall provide all users with full information on applicable roaming charges, in particular on the Eurotariff, when subscriptions are taken out. They shall also provide updates on applicable roaming charges to their roaming customers without undue delay each time there is a change in these charges. Home providers shall take the necessary steps to secure awareness by all their roaming customers of the availability of the Eurotariff.*

They shall in particular communicate to all roaming customers within one month of the entry into force of this Regulation the conditions relating to the Eurotariff in a clear and unbiased manner. They shall send a reminder at reasonable intervals thereafter to all customers who have opted for another tariff.

Article 7

Supervision and enforcement

1. National regulatory authorities shall monitor and supervise compliance with this Regulation within their territory.
2. *National regulatory authorities shall make up-to-date information on the application of this Regulation, in particular Articles 3 and 4, publicly available in a manner that enables interested parties to have easy access to it.*
3. *National regulatory authorities shall in preparation for the review provided for in Article 11, monitor developments in wholesale and retail charges for the provision to roaming customers of voice and data communications services, including SMS and MMS, including in the outermost regions covered by Article 299(2) of the Treaty establishing the European Community. National regulatory authorities shall also be alert to the particular case of involuntary roaming in cross-border regions of neighbouring Member States and monitor whether traffic steering techniques are used to the disadvantage of customers. They shall communicate the results of such monitoring to the Commission, including separate information on corporate, post-paid and pre-paid customers, every six months.*
4. National regulatory authorities shall have the power to require undertakings subject to obligations under this Regulation to supply all information relevant for the implementation and enforcement of this Regulation. These undertakings shall provide such information promptly on request and to the timescales and level of detail required by the national regulatory **authority**.
5. National regulatory authorities may intervene on their own initiative in order to ensure compliance with this Regulation. *In particular, they shall, where necessary, make use of the powers under Article 5 of Directive 2002/19/EC to ensure adequate access and interconnection in order to guarantee the end-to-end connectivity and interoperability of roaming services.*

6. Where a national regulatory authority finds that a breach of the obligations set out in this Regulation has occurred, it shall have the power to require the immediate cessation of such a *breach*.

Article 8

Dispute resolution

1. In the event of a dispute in connection with the obligations laid down in this Regulation between undertakings providing electronic communications networks or services in a Member State, the dispute resolution procedures laid down in Articles 20 and 21 of Directive 2002/21/EC shall apply.

2. In the event of an unresolved dispute involving a consumer or end-user and concerning an issue falling within the scope of this Regulation, the Member States shall ensure that the out-of-court dispute resolution procedures laid down in Article 34 of Directive 2002/22/EC are available.

Article 9

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation 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 those provisions to the Commission not later than *nine months* following the entry into force of this Regulation and shall notify it without delay of any subsequent amendment affecting *them*.

Article 10

Amendment to Directive 2002/21/EC

In Article 1 of Directive 2002/21/EC the following paragraph 5 is added:

"5. This Directive and the Specific Directives are without prejudice to any specific measure adopted for the regulation of international roaming ***on public mobile networks within the Community.***"

Article 11

Review procedure

1. The Commission shall review the functioning of this Regulation and report to the European Parliament and the Council no later than ***eighteen months*** after the date of its entry into force. ***The Commission shall evaluate in particular, whether the objectives of this Regulation have been achieved. In its report the Commission shall review developments in wholesale and retail charges for the provision to roaming customers of voice and data communication services, including SMS and MMS, and shall, if appropriate, include recommendations regarding the need to regulate these services. For this purpose the Commission may use the information supplied pursuant to Article 7(3).***

2. In its report, the Commission shall ***assess whether, in the light of developments in the market and with regard to both competition and consumer protection, there is need to extend the duration of this Regulation beyond the period set out in paragraph 3 or to amend it, taking into account the developments in charges for mobile voice and data communication services at national level and the effects of this Regulation on the competitive situation of smaller, independent or newly started operators. If the Commission finds that there is such a need, it shall submit a proposal to the Parliament and the Council.***

3. *This Regulation shall expire ...* *.

Article 12

Notification requirements

Member States shall notify to the Commission within two months of the entry into force of this Regulation the identity of the national regulatory authorities responsible for carrying out tasks under this *Regulation*.

Article 13

Entry into force

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

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

*

Three years after the entry into force of this Regulation.