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COMMISSION STAFF WORKING DOCUMENT

**on the intra-EU communications provisions of Regulation (EU) 2018/1971 of the
European Parliament and the Council amending Regulation (EU) 2015/2120**

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1 INTRODUCTION

In 2018 the BEREC Regulation¹ was adopted and introduced, among other measures, provisions to regulate the retail charges for intra-EU communications within the EU by way of an amendment to the Open Internet Regulation (“OIR”).²

Article 50 of the BEREC Regulation provided the definitions of regulated intra-EU communications³ and number-based interpersonal communications,⁴ introduced a new Article 5a regulating the retail charges for intra-EU communications, and modified Article 10 of the OIR to provide that Article 5a shall expire on 14 May 2024. In the light of the principle of proportionality, the applicability of the price caps for regulated intra-EU communications was limited in time, to allow proper assessment of the effects of the measures and evaluation to what extent there is an ongoing need to protect consumers⁵.

The measures aimed at ensuring that consumers are not charged excessive prices for making number-based interpersonal communications originating in the Member State of the consumer’s domestic provider and terminating at any fixed or mobile number in another Member State. In particular, Article 5a introduced a retail price cap for intra-EU communications, i.e. fixed and mobile voice calls and SMS to other EU Member States. Pursuant to Article 5a, any retail price (excluding VAT) charged to consumers should not exceed EUR 0.19 per minute for calls (Eurotariff limit), and EUR 0.06 per SMS message. The retail price caps, which entered into force in all Member States on 15 May 2019, were set at a level that allowed providers of publicly available number based interpersonal communications services (later providers) to recoup their costs, thus ensuring a proportionate intervention on both the mobile and fixed calls market.

The retail price caps addressed significant price differences for both fixed and mobile communications, between domestic voice and SMS communications and those terminating in another Member State, in a context of substantial variations of prices between EU Member

¹ Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), OJ L 321, 17.12.2018, p. 1.

² Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users’ rights relating to electronic communications networks and services, and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union, OJ L 310, 26.11.2015, p.1.

³ Regulated intra-EU communications means any number-based interpersonal communications service originating in the Member State of the consumer’s domestic provider and terminating at any fixed or mobile number of the national numbering plan of another Member State, and which is charged wholly or partly based on actual consumption.

⁴ Article 50 of the BEREC Regulation cross-refers to Article 2 of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36). Such provision defines “number-based interpersonal communications service” as an interpersonal communications service which connects with publicly assigned numbering resources, namely, a number or numbers in national or international numbering plans, or which enables communications with a number or numbers in national or international numbering plans.

⁵ Recital 50 of the BEREC Regulation.

States, between providers and tariff packages, and between fixed and mobile voice communications, reported across the EU.⁶

Based on data on tariffs offered by operators in August 2017 for domestic and intra-EU communications (fixed and mobile voice and messaging services),⁷ as well as on evidence of consumers' practices and data in terms of traffic and revenues, between 2012 to 2015, the 2019 Eurobarometer report – published ahead of the adoption of the measures- concluded that tariffs for intra-EU calls varied considerably depending on the Member State of destination. Across 15 Member States,⁸ on average, the price of intra-EU fixed and mobile calls was three times more expensive than domestic calls.⁹ Regarding SMS messages, the same report concluded that the standard price of an intra-EU SMS message was on average twice as expensive as a domestic one.¹⁰

According to recital 53 of the Roaming Regulation (EC) 2022/612,¹¹ with the prolongation of the 'Roam Like At Home' measures introduced by this Regulation, *"(...) it should be considered appropriate to look into the development of the intra-EU communications market. To that end, the existing measures should be evaluated in light of the application of Directive (EU) 2018/1972 and, in particular, the rules on interpersonal communication services, and the introduction of single maximum Union-wide voice termination rates, which is a component of the cost structure of intra-EU communications. The Commission, with the support of BEREC, should assess the effects of the existing measures [...] and determine whether and to what extent there is an ongoing need to reduce the caps in order to protect consumers. That assessment should take place at least one year before the expiry of those measures on 14 May 2024."*

2 EFFECT OF THE MEASURES

The impact of the measures on intra-EU communications has been assessed on the basis of the information resulting from on-going monitoring of the implementation of such rules, including exchanges with stakeholders, as well as from the following sources:

⁶ See the 2019 Eurobarometer survey at <https://europa.eu/eurobarometer/surveys/detail/2221>; See also, European Commission, Directorate-General for Communications Networks, Content and Technology, Federica, F., Mammi, E., Garbasso, G., et al., *Actual consumer practices and operators' offers for intra-EU calls: final report*, European Commission, 27 .07.2018, at <https://data.europa.eu/doi/10.2759/4756>.

⁷ The study analysed the price of domestic and intra-EU fixed and mobile calls, as well as the price for sending 50 text messages (SMS) and multimedia messages (MMS).

⁸ Austria, Belgium, Bulgaria, Croatia, Cyprus, Estonia, France, Germany, Ireland, Italy, the Netherlands, Portugal, Slovakia, Spain, and Sweden.

⁹ According to the 2017 Eurobarometer Report, for a three-minute fixed call, the average standard intra-EU tariff, which amounted to EUR 0.76 (excluding VAT), was 3.6 times more expensive than the average standard domestic tariff, which amounted EUR 0.21 (excluding VAT). In relation to mobile calls, for a three-minute mobile domestic call in the EU, the average standard intra-EU tariff (i.e. calls terminating in another Member State) of EUR 1.53 (excluding VAT), was more than 3.55 times more expensive than the standard domestic tariff of EUR 0.43 (excluding VAT).

¹⁰ On average, the standard tariff for 50 SMS in the EU was EUR 4.624 (excluding VAT), while the cost for sending 50 SMS to another Member State was EUR 10.528 (excluding VAT). The SMS standard tariff was therefore over 2.27 times more expensive.

¹¹ Regulation (EU) 2022/612 of the European Parliament and of the Council of 6 April 2022 on roaming on public mobile communications networks within the Union (recast), OJ L 115, 13.4.2022, p. 1–37.

- Special Eurobarometer 530 survey on International communications within the EU carried out in October/November 2022; (“2022 Eurobarometer Report”);¹²
- Benchmark data on intra-EU communications collected by BEREC;¹³ and
- BEREC Opinion on intra-EU communications regulation.¹⁴

The main findings are described below as follows: (1) the impact on consumers, (2) the impact on providers, and (3) the alternative means of communications, followed by an assessment of these findings.

Besides, an exploratory consultation on the "Future of the electronic communications sector and its infrastructure"¹⁵ was issued on 23 February 2023 until 19 May 2023, which contains a question regarding the measures for intra-EU communications. Responses to the exploratory consultation will contribute to deciding on the next steps.

2.1 Impact on consumers

Three years after the introduction of the retail price caps for intra-EU communications, **retail prices** for calls originating in one Member State and terminating in other Member States, **are undeniably lower in the EU**. On average, prices have dropped by about 2/3 since the entry into force of the rules on intra-EU communications in May 2019, as shown by the benchmark data collected by BEREC.

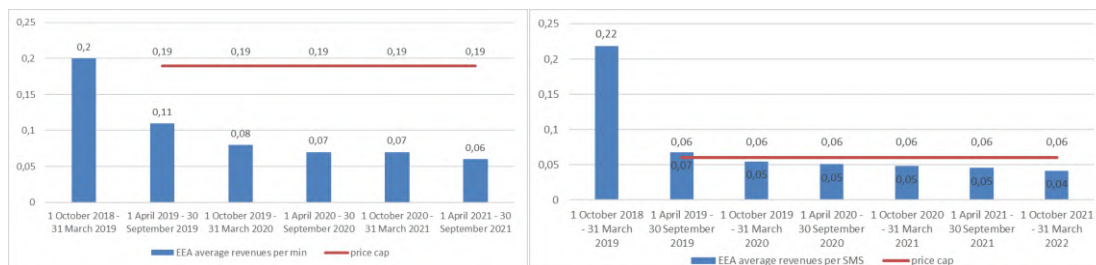


Figure 1: Evolution of Intra-EU (EEA) average revenues (in EUR) per mobile minute and SMS for price regulated intra-EU communications 1 October 2018 – 31 March 2022¹⁶

¹² International communication within the EU, May 2023, Eurobarometer survey, available at <https://europa.eu/eurobarometer/surveys/detail/2852>.

¹³ According to its Opinion, BEREC collected data on Intra-EU communications from national regulatory authorities for a six-month period (1 October 2018 – 31 March 2019) before the implementation of the Regulation, and for the period 1 April 2021 – 31 March 2022 (split in two: 1 April 2021 - 30 September 2021, and 1 October 2021 - 31 March 2022) after the implementation of the Regulation. The data includes information on traffic, revenues, consumption, etc. of intra-EU communications.

¹⁴ The Opinion was adopted on 9 March 2023 and it is available at <https://www.berec.europa.eu/en/document-categories/berec/opinions/berec-opinion-on-the-review-of-the-intra-eu-communications-regulation>.

¹⁵ https://ec.europa.eu/eusurvey/runner/Future_of_Connectivity.

¹⁶ Due to rounding, the relevant value appears to be the same, although there is some difference in the height of the pillars. Source: BEREC benchmark data collection, and BEREC Opinion on intra-EU communications regulation.

The 2022 Eurobarometer Report shows that respondents claim the **frequency of calls and messages** to other EU Member States **has not increased or decreased significantly**. On a weekly basis, 27% of consumers call or send SMS messages to another Member State; the prior 2020 Eurobarometer Report presented a similar percentage (26%).¹⁷ However, the same survey shows that, since May 2019, when the cap on the price of calls between EU Member States came into effect, almost 1 in 3 consumers (31%) make more or longer calls to another EU Member State by using their mobile phone.

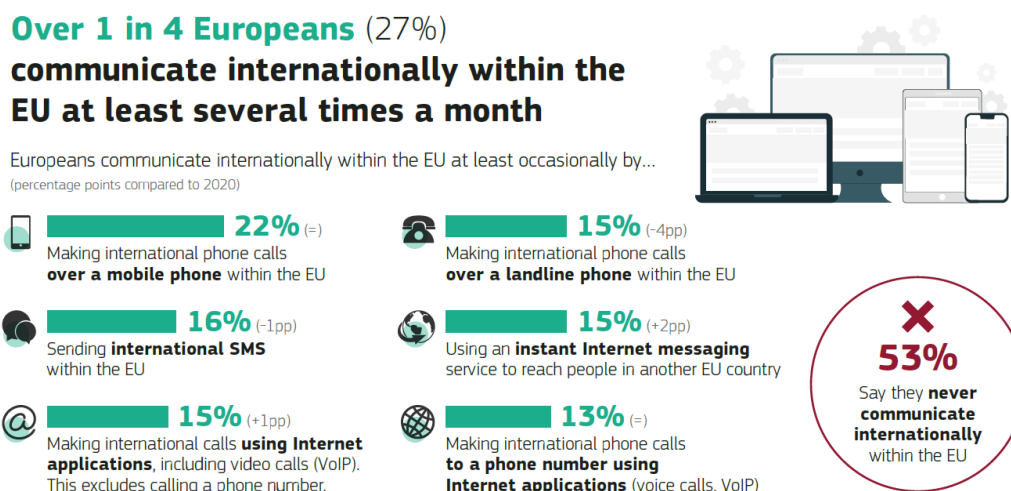


Figure 2: Eurobarometer 2022 -Results on the frequency and means of international communications

According to the 2022 Eurobarometer Report, where the respondents were asked about the different methods they use for their international communications to other Member States, consumers **prefer to make intra-EU calls or send intra-EU messages from their mobile phones** (e.g. 40% of respondents prefer to use mobile phones compared to 23% who prefer internet applications, which is the second preferred option). The use of a traditional fixed line is still the second preference for those aged 55 or above with 17% of these respondents choosing landline phone, compared to only 13% for internet applications. However, the same survey also shows that mobile phones come second in terms of **frequency of use** (15% daily or regular use) after **instant internet messaging applications** (18% daily or regular use).

¹⁷ <https://europa.eu/eurobarometer/surveys/detail/2232>.

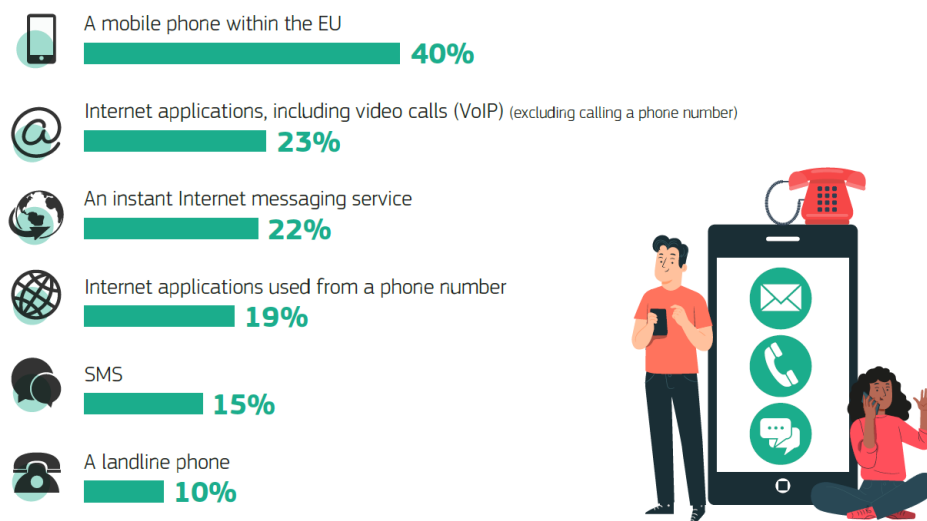


Figure 3: Eurobarometer 2022 Preference of Europeans for their international communications within the EU

The same 2022 Eurobarometer report shows that consumer preferences are driven primarily by convenience of usage and cost.

Awareness of the price cap for communications terminating in another Member State is still relatively low and has not changed much compared to 2020, shortly after the measures were introduced. Around 40% of European consumers are aware of the price cap, a percentage similar to that of 2020 (43%). Besides, a significant amount of consumers (53%) simply do not need to make calls to other Member States.

It seems that there is a correlation between the frequency of use of intra-EU communications and the awareness of the price caps. Respondents who communicate across Member States within the EU at least several times a month (57%) or occasionally (55%) are more likely to say they have heard of the price cap than those who never do so (25%).

2.2 Impact on providers

According to the benchmark data collected by BEREC, the **average number of both fixed and mobile intra-EU minutes** –per month and per subscriber– increased shortly after the introduction of the measures. However such figures started to decrease slowly after two years; **this downward trend has been maintained since then**, including during the COVID pandemic when people could not travel across the EU.

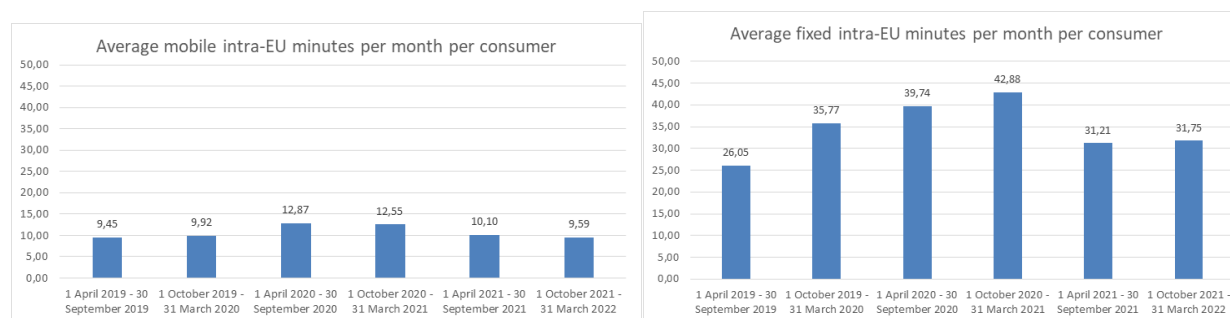


Figure 4: Average number of fixed and mobile intra-EU minutes per month per consumer (consumers that used intra-EU communications services, both regulated and from alternative tariffs), 1 April 2019 - 31 March 2022.

If the data on SMS messages are also taken into account, the benchmark data collected by BEREC also shows that the total volumes of intra-EU communications (including both fixed and mobile call minutes and number of SMS messages) have not increased significantly either, after the introduction of the measures, and that **the volumes are also slowly decreasing year- by-year.**



Figure 5: Development in total minutes for price regulated intra-EU mobile and fixed calls and alternative tariffs (consumers only) as well as total minutes of intra-EU communications (consumers and businesses), 1 April 2019 - 31 March 2022.

Based on the estimations made by BEREC, providers can fully recover the costs of intra-EU communications. This is further supported by the fact that, according to BEREC, no provider has applied for derogations from the price caps, a possibility foreseen in the measures¹⁸.

2.3 Alternative means of communications

There is no specific data about how consumers use alternative communication technologies such as app-based means for communications (e.g. Skype, Viber, or WhatsApp). Neither BEREC nor the NRAs have collected such information yet. The emergence of new apps and instant communication platforms has had an impact on traditional means of communication and intra-EU communications have been affected by this trend as well.

An analysis conducted among the users of such alternative communication technologies, commissioned by BEREC in 2021, can be used to understand whether number-independent services provide a real alternative. The analysis shows the following: 71% of the respondents

¹⁸ Indeed, in order to address very exceptional scenarios in a proportionate manner, Article 5a of the OIR provides the possibility for NRAs to grant a derogation upon the request of providers in justified exceptional cases, where a provider was not able to sustain its domestic pricing model.

exclusively used internet applications for cross-border communications; however, this percentage decreased to 30% when consisting of urgent communications.¹⁹

Moreover, there is the barrier of interoperability. While traditional communication services (i.e. number-based interpersonal communications services) are interoperable, including the regulated intra-EU calls and messages, this is not the case for number-independent interpersonal communications services which are based on proprietary protocols, designed and made by a single entity, and therefore, not interoperable with each other.

The recently adopted EU Digital Markets Act (“DMA”)²⁰ envisages the possibility to impose an interoperability obligation for “designated gatekeepers”. Therefore, it would be worth assessing if any obligations imposed on the designated gatekeepers could have an effect on interoperability in the next years.

According to the 2022 Eurobarometer Report, as stated in section 2.1, consumers in the Union prefer to use number-based interpersonal communications services calling or sending a message to someone in another Member State within the EU. This is confirmed by the benchmark data collected by BEREC, showing that approx. 13-15% of total active mobile subscribers (consumers and businesses) use intra-EU communications at regulated prices. While this relatively low percentage might point to increasing substitution of alternative means of communications for intra-EU calls, the fact remains that there is still a steady use of the regulated calls and SMS for this type of communication.

2.4 Overall assessment of the effects of the existing measures

The data resulting from the BEREC Report and the 2022 Eurobarometer Report, as summarized above, provide a balanced picture.

Without a doubt, the measures introduced in 2018 have significantly lowered the retail prices of intra-EU communications and there is a subset of EU consumers who benefited from the measures and keep relying on it. At the same time, the measures do not seem to have had a significant negative effect on the providers.

As regards the ongoing need to protect consumers, a significant number of consumers in most Member States continue to rely on traditional communications such as a telephony calls and SMS messages for intra-EU communications, despite an increasing number of consumers having access to number-independent interpersonal communications services for their intra-EU communication needs. The measures adopted in 2018 have ensured in a proportionate manner that consumers using intra-EU communications are protected against high prices while at the same time having only a moderated impact on providers.

However, other factors than just price should be also taken into consideration while analysing the demand for intra EU-communications. Firstly, although more than half of the consumers (according to the 2022 Eurobarometer Report) never use intra-EU communications and overall,

¹⁹ Analysing EU consumer perceptions and behaviour on digital platforms for communication. Analysis report, available at <https://www.berec.europa.eu/en/document-categories/berec/reports/analysing-eu-consumer-perceptions-and-behaviour-on-digital-platforms-for-communication-analysis-report>.

²⁰ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (Text with EEA relevance) OJ L 265, 12.10.2022, p. 1.

their use is declining, there is still a quarter of consumers who keep using these services regularly even today. For instance, they remain popular among those aged 55 or above, and overall, there is still an ongoing demand on the market. Secondly, the lower retail prices have not resulted directly in an increased volume of intra-EU communications, meaning that these services do not seem to be sensitive to the changes of the retail prices.

As regards the availability of alternative services, there are not enough data available yet to draw a final conclusion on the use of number-independent interpersonal communication services. Currently consumers do not seem to perceive those communication methods as a real alternative to the use of number-based interpersonal communications services, since, based on the Eurobarometer survey, only 15 % communicate internationally within the EU using these methods. This is the case even if consumers in the Union currently consider the use of a mobile phone as the most convenient means for intra-EU communications. A significant group of consumers who still rely on and intend to continue to use intra-EU communications in the coming years, are unlikely to switch to alternative methods of communication and would therefore warrant continued protection.

Given that the wholesale prices for intra-EU communications are not regulated, and that there is a lack of overview of the transit costs, it is difficult to anticipate at this stage what would be the impact on retail prices for intra-EU communications if the retail price caps were entirely removed. As a result, at this stage, it cannot be excluded that those retail prices would increase should the measures be removed.

As regards whether the caps should be further reduced, on the one hand, the risk that consumers pay excessive prices for their intra-EU communications appears to have been so far addressed efficiently by this legislative measure. The caps appear to have been a suitable benchmark for setting the maximum rate for regulated intra-EU communications as agreed by the co-legislators. At the same time, the price caps do not seem to have had a significant impact on the providers and none have made use of the possibility to ask for a derogation.

On the other hand, based on the existing data, the introduction of the cap on retail prices has not resulted in an increased volume of intra-EU communications, which remains limited. In this regard, there is no data available that could suggest that the volume of intra-EU communications would increase if the current price caps were further reduced. Moreover, should this happen, it would also not be likely, based on BEREK estimation of the wholesale costs of intra-EU communications, that operators would face unexpected costs increases. According to BEREK's estimation, there is sufficient margin between the wholesale costs and the retail prices to ensure that the current retail price regulation remains sustainable on both the mobile and the fixed calls markets. In addition, and although no detailed forward-looking overall cost assessment is currently available, the operators' wholesale costs linked to termination rates are likely to decrease in the future as a result of the Delegated Regulation setting single maximum Union-wide voice termination rates²¹.

²¹ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32021R0654>

3 CONCLUSIONS

Article 50 of the BEREC Regulation, which introduced a new Article 5a regulating the retail charges for intra-EU communications, and modified Article 10 of the OIR, set the duration of the application of Article 5a until 14 May 2024.

As described above, the measures on intra-EU communications are protecting consumers from excessive retail prices. At this stage, it cannot be concluded that the retail prices for intra-EU communications would not increase if the measures expired on 14 May 2024 and were not extended. Moreover, the retail price caps have neither resulted in an increase of the volume of intra-EU communications, nor seem to have had a significant negative impact on the providers.

In sum, the application of limits to the price that providers may charge consumers for intra-EU communications would still seem to serve as protection for at least a certain category of consumers. Moreover, the available data does not exclude further lowering of the retail price caps for intra-EU communications in the future. However, a more detailed assessment would be needed to substantiate any future modification which moreover remains a policy choice to be further assessed.
