

REGULATION (EC) No 544/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 18 June 2009

amending Regulation (EC) No 717/2007 on roaming on public mobile telephone networks within the Community and 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 Committee ⁽¹⁾,

Having consulted the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) Regulation (EC) No 717/2007 ⁽³⁾ imposed, on an exceptional and temporary basis, limits on the charges that may be levied by mobile operators, at wholesale and retail levels, for the provision of international roaming services for voice calls originating and terminating within the Community. That Regulation also laid down rules aimed at increasing price transparency and improving the provision of information on charges to users of Community-wide roaming services.
- (2) The Commission has carried out a review in accordance with Article 11 of Regulation (EC) No 717/2007, where it was required to evaluate whether the objectives of that Regulation had been achieved, to review developments in wholesale and retail charges for the provision to roaming customers of voice and data communications services, including SMS and MMS, and to include, if appropriate, recommendations regarding the need to regulate those services. In its report to the European Parliament and the Council, contained in its Communication of 23 September 2008 on the outcome of the review of the functioning of Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC, the Commission concluded that it was appropriate to extend the validity of Regulation (EC) No 717/2007 beyond 30 June 2010.

- (3) Furthermore, the Commission found that the scope of Regulation (EC) No 717/2007 should be extended to cover the provision within the Community of SMS and data roaming services. The special characteristics exhibited by the international roaming markets, which justified the adoption of Regulation (EC) No 717/2007 and the imposition of obligations on mobile operators with regard to the provision of Community-wide voice roaming calls, apply equally to the provision of Community-wide SMS and data roaming services. Like voice roaming services, SMS and data roaming services are not purchased independently at national level but constitute only part of a broader retail package purchased by customers from their home provider, thereby limiting the competitive forces at play. Likewise, because of the cross-border nature of the services concerned, national regulatory authorities which are responsible for safeguarding and promoting the interests of mobile customers resident within their territory are not able to control the behaviour of the operators of the visited network, situated in other Member States.

- (4) Structural problems relating to roaming services should be easier to solve in a genuine single market for mobile communication services, which is not fully in place at present, but which should be the ultimate aim of any regulatory framework.
- (5) For this reason the national regulatory authorities, acting within the European Regulators Group for Electronic Communications Networks and Services (ERG), established by Commission Decision 2002/627/EC ⁽⁴⁾, in its response to the public consultation on the review of Regulation (EC) No 717/2007, once again called on the Commission to act at Community level, both as regards the prolongation of the Regulation and with regard to the regulation of SMS roaming and data roaming services.
- (6) Data on the development of prices for Community-wide voice roaming services since the entry into force of Regulation (EC) No 717/2007, including in particular those collected by national regulatory authorities and reported on a quarterly basis through the medium of the ERG, do not provide sufficient evidence to suggest that competition at the retail or wholesale levels is likely to be sustainable from June 2010 onwards in the absence of regulatory measures. Such data indicates that retail and wholesale prices are clustering at or close to the limits set by Regulation (EC) No 717/2007, with only limited competition below those limits.

⁽¹⁾ Opinion of 15 January 2009 (not yet published in the Official Journal).

⁽²⁾ Opinion of the European Parliament of 22 April 2009 (not yet published in the Official Journal) and Council Decision of 8 June 2009.

⁽³⁾ OJ L 171, 29.6.2007, p. 32.

⁽⁴⁾ OJ L 200, 30.7.2002, p. 38.

- (7) The expiry in June 2010 of the regulatory safeguards which apply to intra-Community voice roaming services at wholesale and retail levels by virtue of Regulation (EC) No 717/2007 would therefore give rise to a significant risk that the underlying lack of competitive pressures in the voice roaming market and the incentive for mobile operators to maximise their roaming revenues would result in retail and wholesale prices for intra-Community roaming that do not constitute a reasonable reflection of the underlying costs involved in the provision of the service, thereby jeopardising the objectives of Regulation (EC) No 717/2007. Regulation (EC) No 717/2007 should therefore be extended beyond 30 June 2010 for a period of two years in order to ensure the smooth functioning of the internal market by guaranteeing that consumers continue to benefit from the assurance that they will not be charged an excessive price, in comparison with competitive national prices, when making or receiving a regulated roaming call while at the same time leaving sufficient time for competition to develop.
- (8) The obligations laid down in this Regulation should not distort the competitive conditions between mobile operators within the Community and should not introduce any sort of competitive advantage, in particular on the basis of the size, type of roaming traffic or home market of the provider of roaming services.
- (9) The levels of the maximum average wholesale charges for regulated roaming calls set by Regulation (EC) No 717/2007 should continue to decrease over the extended duration of the Regulation to reflect decreasing costs, including reductions in regulated mobile termination rates in the Member States, in order to ensure the smooth functioning of the internal market while at the same time continuing to meet the dual objectives of eliminating excessive prices and allowing operators freedom to compete and innovate.
- (10) In order to stimulate and strengthen sustainable competition in the various roaming services, national regulatory authorities should monitor whether there is discrimination between large and smaller providers, particularly in relation to the calculation of wholesale prices.
- (11) The date in 2009 on which the decrease in the maximum price limits for regulated roaming calls at both wholesale and retail levels takes effect should be brought forward from 30 August to 1 July, in order to ensure consistency with the introduction of the obligations regarding the pricing of regulated SMS messages provided for by this Regulation. In this way, users of both voice and SMS roaming services would be able to benefit from the new tariffs during the period when there is the greatest demand for those services.
- (12) Where charge limits are not denominated in euro, the applicable charge limits for the initial limits and the revised values of those limits should be determined in the relevant currency by applying the reference exchange rates published in the *Official Journal of the European Union* on the dates specified in this Regulation. Where there is no publication on the date specified, the applicable reference exchange rates should be those published in the first *Official Journal of the European Union* following that date and containing such reference exchange rates.
- (13) As compliance with the wholesale charge limit established by Regulation (EC) No 717/2007 is measured by reference to the average wholesale price prevailing between any two operators over a 12-month period, it is appropriate to clarify that the period may be shorter, for example where the date of a scheduled decrease in the level of the maximum average wholesale charge occurs before the end of the 12-month period.
- (14) The practice by some mobile network operators of billing for the provision of wholesale roaming calls on the basis of minimum charging periods of up to 60 seconds, as opposed to the per second basis normally applied for other wholesale interconnection charges, creates a distortion of competition between these operators and those applying different billing methods and undermines the consistent application of the wholesale price limits introduced by Regulation (EC) No 717/2007. Moreover it represents an additional charge which, by increasing wholesale costs, has negative consequences for the pricing of voice roaming services at retail level. Mobile operators should therefore be required to bill for the wholesale provision of regulated roaming calls on a per second basis.
- (15) The maximum levels of the Eurotariff, both for calls made and calls received, should continue to decrease annually during the extended period of validity of Regulation (EC) No 717/2007 in a manner consistent with the decreases required during the initial period of application of that Regulation, to reflect the continuing decreases in domestic mobile prices generally and the continuing decreases in the underlying costs of providing regulated roaming calls. In this way, the continuity in the effects of that Regulation is maintained.
- (16) The increased margins between maximum wholesale and retail charges provided for by this Regulation should allow increased scope for operators to compete on price at the retail level, thereby maximising the chances that a properly competitive market will emerge.
- (17) Some operators face higher wholesale costs than others due to geographical or other circumstances, such as difficult topography, regions with low population density and large influxes of tourists within short time periods.

- (18) The ERG has estimated that the practice of mobile operators of using charging intervals of more than one second when billing for roaming services at retail level has added 24 % to a typical Eurotariff bill for calls made and 19 % for calls received. They also stated that these increases represent a form of hidden charge since they are not transparent to most consumers. For this reason, the ERG recommended urgent action to address the different billing practices at retail level applied to the Eurotariff.
- (19) While Regulation (EC) No 717/2007, by introducing a Eurotariff in the Community, established a common approach to ensuring that roaming customers are not charged excessive prices for regulated roaming calls, the different billing unitisation practices employed by mobile operators seriously undermines its consistent application. This also means that, despite the Community-wide, cross-border nature of intra-Community roaming services, there are divergent approaches in relation to the billing of regulated roaming calls which distort competitive conditions in the single market.
- (20) A common set of rules regarding unitisation of Eurotariff bills at retail level should therefore be introduced in order to further strengthen the single market and provide throughout the Community a common level of protection to consumers of Community-wide roaming services.
- (21) Providers of regulated roaming calls at the retail level should therefore be required to bill their customers on a per second basis for all calls subject to a Eurotariff, subject only to the possibility to apply a minimum initial charging period of no more than 30 seconds for calls made. This will enable operators to cover any reasonable set-up costs and to provide flexibility to compete by offering shorter minimum charging periods. However, no minimum initial charging period is justified in the case of Eurotariff calls received, as the underlying wholesale cost is charged on a per second basis and any specific set-up costs are already covered by mobile termination rates.
- (22) Customers should not have to pay for receiving voice mail messages in a visited network, as they cannot control the duration of such messages. This should be without prejudice to other applicable voice mail charges, for example charges for listening to such messages.
- (23) As regards SMS roaming services, the market data collected by the ERG and the Commission since the entry into force of Regulation (EC) No 717/2007 have demonstrated that a situation persists across the Community in which wholesale charges for these services have remained broadly stable and have no meaningful relationship with underlying costs. As is the case for voice roaming services, there appear to be insufficient competitive pressures on operators to reduce wholesale prices. Retail prices for SMS roaming services have also, with no clear justification, remained broadly stable, subject to high margins and priced significantly above equivalent domestic SMS services.
- (24) Just as is the case for voice roaming calls, there is a significant risk that imposing wholesale pricing obligations alone would not result automatically in lower rates for retail customers. 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 prejudice the position of some operators, in particular smaller operators, by increasing the risk of price squeeze.
- (25) Furthermore, because of the particular structure of the roaming market and its cross-border nature, the 2002 regulatory framework has not provided national regulatory authorities with suitable tools to address effectively the competitive problems underlying the high level of wholesale and retail prices for regulated roaming SMS services. This fails to ensure the smooth functioning of the internal market and should be corrected.
- (26) The ERG also stated in its response to the Commission's public consultation on the review of the operation of Regulation (EC) No 717/2007 that it considered that regulation of SMS roaming was necessary, at both wholesale and retail levels, in order to bring prices more into line with costs and with domestic prices. It considered that arrangements analogous to those for voice roaming would be suitable. More specifically, the ERG recommended introducing a cap on the average wholesale rate charged by any one operator to any other operator for SMS roaming, and amending the Eurotariff obligation to include an offer of SMS roaming at a rate no greater than a specified maximum cap.
- (27) Regulatory obligations should therefore be imposed with regard to regulated roaming SMS services at wholesale level, in order to establish a more reasonable relationship between wholesale charges and the underlying costs of provision, and at retail level to protect the interests of roaming customers.
- (28) These regulatory obligations should take effect as soon as possible, while allowing the operators concerned a reasonable period to adapt their prices and service offers to ensure compliance.

- (29) The most effective and proportionate approach to regulating the level of prices for regulated roaming SMS messages at wholesale level is the setting at Community level of a maximum average charge per SMS sent from a visited network. The average wholesale charge should apply between any pair of mobile operators within the Community over a specified period.
- (30) The wholesale price limit for regulated roaming SMS should include all costs incurred by the provider of the wholesale service, including, *inter alia*, origination, transit and the unrecovered cost of termination of roaming SMS messages on the visited network. Wholesale providers of regulated roaming SMS services should therefore be prohibited from introducing a separate charge for the termination of roaming SMS messages on their network, in order to ensure the consistent application of the rules established by this Regulation.
- (31) The most effective and proportionate approach to regulating the level of prices for Community-wide roaming SMS messages at the retail level is the introduction of a requirement for mobile operators to offer their roaming customers a Euro-SMS tariff which does not exceed a specified maximum price limit. The Euro-SMS tariff should be set at a level which guarantees a sufficient margin to operators while also more reasonably reflecting the underlying retail costs.
- (32) This regulatory approach should ensure that retail charges for regulated roaming SMS messages more accurately reflect the underlying costs involved in the provision of the service than has previously been the case. The maximum Euro-SMS tariff that may be offered to roaming customers should therefore reflect a reasonable margin over the costs of providing a regulated roaming SMS service, whilst allowing operators the freedom to compete by differentiating their offerings and adapting their pricing structures to market conditions and consumer preferences. This regulatory approach should not apply to value-added SMS services.
- (33) Roaming customers should not be required to pay any additional charge for receiving a regulated roaming SMS or voicemail message while roaming on a visited network, since such termination costs are already compensated by the retail charge levied for the sending of a roaming SMS or voicemail message.
- (34) A Euro-SMS tariff should automatically apply to any new or existing roaming customer who has not deliberately chosen or does not deliberately choose a special SMS roaming tariff or a package for roaming services including regulated roaming SMS services.
- (35) In order to ensure end-to-end connectivity and interoperability for roaming customers of regulated roaming SMS services, national regulatory authorities should intervene in a timely manner where a terrestrial mobile network operator established in one Member State complains to its national regulatory authority that its subscribers are unable to send or receive regulated roaming SMS messages to or from subscribers of a terrestrial mobile network located in another Member State as a result of a failure of the two operators concerned to conclude an agreement. Such intervention should be in accordance with the provisions of Article 5 of 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) ⁽¹⁾ and on a coordinated basis, and in accordance with the provisions of Article 8(1) of Regulation (EC) No 717/2007 and Article 21 of Directive 2002/21/EC ⁽²⁾.
- (36) An SMS message is a Short Message Service text message and is clearly distinct from other messages such as MMS messages or e-mails. In order to ensure that the Regulation is not deprived of its effectiveness and that its objectives are fully met, any changes to the technical parameters of a roaming SMS message which would differentiate it from a domestic SMS message should be prohibited.
- (37) Data collected by national regulatory authorities indicate that average wholesale charges for data roaming services levied by visited network operators from roaming customers' home providers appear to be on a downward trend, although high prices for wholesale data roaming services persist.
- (38) The high level of retail prices for data roaming services continues to be of concern and indicates that competition in these services is still not sufficient. However, unlike voice and SMS roaming services, competitive constraints exist at retail level, as roaming customers have alternative means of accessing data services when abroad, such as public wireless access to the Internet, without associated numbering constraints. It would therefore be premature at this stage to regulate prices at the retail level. Furthermore, any roaming network connection should be established with the user's consent. Accordingly, there should be no roaming data downloading, including software updating and e-mail retrieval, without the user's prior consent or request, unless the user has indicated that he does not wish to enjoy such protection.
- (39) Home providers should not charge the roaming customer for any regulated data roaming service, unless and until the roaming customer accepts the provision of the service.

⁽¹⁾ OJ L 108, 24.4.2002, p. 7.

⁽²⁾ OJ L 108, 24.4.2002, p. 33.

- (40) However, measures should be introduced to improve the transparency of retail prices for data roaming services, in particular to eliminate the problem of 'bill shock' which constitutes a barrier to the smooth functioning of the internal market, and to provide roaming customers with the tools they need to monitor and control their expenditure on data roaming services. Equally, there should be no obstacles to the emergence of applications or technologies which can be a substitute for, or alternative to, roaming services, such as WiFi, Voice over Internet Protocol (VoIP) and Instant Messaging services. Consumers should be provided with this information, thereby allowing them to make an informed choice.
- (41) In particular, mobile operators should provide their roaming customers with personalised tariff information on the charges applicable to those customers for data roaming services every time they initiate a data roaming service on entering another Member State. This information should be delivered to their mobile telephone or other mobile device in the manner best suited to its easy receipt and comprehension.
- (42) In order to facilitate customers' understanding of the financial consequences of the use of regulated data roaming services and to permit them to monitor and control their expenditure, the home provider should give examples for data roaming applications, such as e-mail, picture and web-browsing, by indicating their approximate size in terms of data usage.
- (43) In addition, in order to avoid bill shocks, mobile operators should define one or more maximum financial and/or volume limits for their outstanding charges for data roaming services, expressed in the currency in which the roaming customer is billed, and which they should offer to all their roaming customers, free of charge, with an appropriate notification when this limit is being approached. Upon reaching this maximum limit, customers should no longer receive and be charged for those services unless they specifically request continued provision of those services in accordance with the terms and conditions set out in the notification. Roaming customers should be given the opportunity to opt for any of these maximum financial or volume limits within a reasonable period or to choose not to have such a limit. Unless customers state otherwise, they should be put on a default limit system.
- (44) These transparency measures should be seen as minimum safeguards for roaming customers, and should not preclude mobile operators from offering their customers a range of other facilities which help them to predict and control their expenditure on data roaming services. For example, many operators are developing new retail flat rate roaming offers which permit data roaming for a specified price over a specified period up to a 'fair use' volume limit. Likewise operators are developing systems to enable their roaming customers to be updated on a real-time basis on their accumulated outstanding data roaming charges. To ensure the smooth functioning of the internal market, these developments on the domestic markets should be reflected in the harmonised rules.
- (45) Moreover, the persistence of high wholesale charges for data roaming services is primarily attributable to high wholesale prices charged by operators of non-preferred networks. Such charges are caused by traffic steering limitations which leave operators with no incentive to reduce their standard wholesale prices unilaterally since the traffic will be received irrespective of the price charged. This results in an extreme variation in wholesale costs. In some cases the wholesale data roaming prices applicable to non-preferred networks are 30 times higher than those applied to the preferred network. These excessively high wholesale charges for data roaming services lead to appreciable distortions of competitive conditions between mobile operators within the Community which undermine the smooth functioning of the internal market. They also constrain the ability of home providers to predict their wholesale costs and therefore to provide their customers with transparent and competitive retail pricing packages. In view of the limitations on the ability of national regulatory authorities to deal with these problems effectively at national level, a wholesale price limit on data roaming services should apply. The wholesale price limit should be set at a safeguard level well above the lowest wholesale prices currently available in the market, to enhance competitive conditions and permit the development of a competitive trend in the market, while ensuring the better functioning of the internal market for the benefit of consumers. By eliminating the excessive wholesale data roaming charges that persist in certain cases in the market, this safeguard level should prevent, throughout the period of application of Regulation (EC) No 717/2007, the emergence of distortions or restrictions on competition between mobile operators.
- (46) In order to reflect developments in the market, and the applicable regulatory framework for electronic communications, it is necessary to refer to 'public communications networks' instead of 'public telephony networks'. For the sake of consistency Article 1(5) of Directive 2002/21/EC should be amended accordingly.
- (47) Since the objectives of this Regulation, namely to amend Regulation (EC) No 717/2007 and Directive 2002/21/EC in order to maintain and further develop a common set of rules to ensure that users of public mobile communications networks when travelling within the Community do not pay excessive prices for Community-wide roaming services (be it in respect of voice calls, SMS messages or data transmissions), thereby contributing to the smooth functioning of the internal market, while achieving a high level of consumer protection and safeguarding competition between mobile operators, cannot be sufficiently achieved

by the Member States in a secure, harmonised and timely manner and can therefore, by reason of the scale and effects of the proposed action, 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 that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(48) This common approach should nevertheless be maintained for a limited time period but may, in the light of a review to be carried out by the Commission, be further extended or amended or be replaced by alternative regulatory options, on the basis of appropriate recommendations from the Commission.

(49) The Commission should review the effectiveness of Regulation (EC) No 717/2007 as amended by this Regulation in light of its objectives and the contribution to the implementation of the regulatory framework and the smooth functioning of the internal market. In this context, the Commission should consider the impact on the competitive position of mobile communications providers of different sizes and from different parts of the Community, the developments, trends and transparency in retail and wholesale charges, their relation to actual costs, the extent to which the assumptions made in the impact assessment that accompanied this Regulation have been confirmed and the costs of compliance of operators and the impact on the investments. The Commission should also, in the light of technological developments, consider the availability and quality of services which are an alternative to roaming (such as VoIP).

(50) Prior to the abovementioned review, and in order to ensure the continuous monitoring of roaming services in the Community, the Commission should prepare an interim report to the European Parliament and the Council which includes a general summary of the latest trends in roaming services and an intermediary assessment of the progress towards achieving the objectives of Regulation (EC) No 717/2007 as amended by this Regulation and of the possible alternative options for achieving these objectives.

(51) Before making appropriate recommendations, the Commission should also assess whether the regulation of roaming services could be appropriately covered within the regulatory framework for electronic communications. It should thoroughly assess alternative methods of achieving the objectives of Regulation (EC) No 717/2007, such as:

- dealing with the problems at wholesale level, by introducing an obligation to provide reasonable and fair access on a non-discriminatory basis and/or on equitable reciprocal conditions,

- having an approach based on achieving prices and conditions for roaming customers similar to the competitive prices and conditions prevailing within the market of the visited network, including the possibility for the customer to obtain different prices from different operators in the market of the visited network,
- addressing problems in the framework of Community competition law,

In particular, the Commission should, in consultation with a body of European regulators for electronic communications, investigate and assess the competitive structure of the mobile market which leads to uncompetitive roaming prices, and should report to the European Parliament and Council its conclusions and proposals to address structural problems in mobile markets, in particular barriers to entry and expansion.

(52) Regulation (EC) No 717/2007 and Directive 2002/21/EC should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EC) No 717/2007/EC

Regulation (EC) No 717/2007/EC is hereby amended as follows:

1. the title is replaced by the following:

'Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile communications networks within the Community';

2. Article 1 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. This Regulation introduces a common approach to ensuring that users of public mobile communications networks when travelling within the Community do not pay excessive prices for Community-wide roaming services in comparison with competitive national prices, when making calls and receiving calls, when sending and receiving SMS messages and when using packet switched data communication services, thereby contributing to the smooth functioning of the internal market while achieving a high level of consumer protection, fostering competition and transparency in the market and offering 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 Community-wide roaming services for voice calls and SMS messages originating and terminating within the Community and for packet switched data communication services used by roaming customers while roaming on a mobile communications network in another Member State. It applies both to charges levied between network operators at wholesale level and, where appropriate, to charges levied by home providers at retail level.;

(b) paragraph 4 is replaced by the following:

'4. The charge limits set out in this Regulation are expressed in euro. Where charges governed by Articles 3, 4, 4a and 4b and Article 6a(3) and (4) are denominated in other currencies, the initial limits pursuant to those Articles shall be determined in those currencies, in the case of Articles 3 and 4 by applying the reference exchange rates prevailing on 30 June 2007, and in the case of Articles 4a and 4b and Article 6a(3) and (4) by applying the reference exchange rates published on 6 May 2009 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(2), 4(2) and 6a(4), the revised values shall be determined by applying the reference exchange rates so published one month preceding the date from which the revised values apply. The same reference exchange rates shall be applied to revise annually the value of the charges governed by Articles 4a and 4b and Article 6a(3) where these charges are denominated in currencies other than the euro.;

3. in Article 2, paragraph 2 is amended as follows:

(a) points (b) to (g) are replaced by the following:

'(b) "home provider" means an undertaking that provides a roaming customer with terrestrial public mobile communications services either via its own network or as a mobile virtual network operator or reseller;

(c) "home network" means a terrestrial public mobile communications network located within a Member State and used by a home provider for the provision of terrestrial public mobile communications services to a 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, to send or receive SMS messages, or to use packet switched data communications, while in a Member

State other than that in which that customer's 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 communications network within the Community or received by a roaming customer, originating on a public communications network within the Community and terminating on a visited network;

(f) "roaming customer" means a customer of a provider of terrestrial public mobile communications services, by means of a terrestrial public mobile network situated in the Community, whose contract or arrangement with his home provider permits the use of a mobile telephone or other device to make or to receive calls, to send or receive SMS messages, or to use packet switched data communications 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 communications network situated in a Member State other than that of the home network and permitting a roaming customer to make or receive calls, to send or receive SMS messages or to use packet switched data communications, by means of arrangements with the operator of the home network.;

(b) the following points are added:

'(h) "Euro-SMS tariff" means any tariff not exceeding the maximum charge provided for in Article 4b, which a home provider may levy for the provision of regulated roaming SMS messages in accordance with that Article;

(i) "SMS message" means a Short Message Service text message, composed principally of alphabetical and/or numerical characters, capable of being sent between mobile and/or fixed numbers assigned in accordance with national numbering plans;

(j) "regulated roaming SMS message" means an SMS message sent by a roaming customer, originating on a visited network and terminating on a public communications network within the Community or received by a roaming customer, originating on a public communications network within the Community and terminating on a visited network;

(k) “regulated data roaming service” means a roaming service enabling the use of packet switched data communications by a roaming customer by means of his mobile telephone or other mobile device while it is connected to a visited network. A regulated data roaming service does not include the transmission or receipt of regulated roaming calls or SMS messages, but does include the transmission and receipt of MMS messages.’;

4. Article 3 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. The average wholesale charge referred to in paragraph 1 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 end of the period of application of a maximum average wholesale charge as provided for in this paragraph or the expiry of this Regulation. The maximum average wholesale charge shall decrease to EUR 0,28 and EUR 0,26, on 30 August 2008 and on 1 July 2009 respectively and shall further decrease to EUR 0,22 and EUR 0,18, on 1 July 2010 and on 1 July 2011 respectively.’;

(b) in paragraph 3 the following subparagraph is added:

‘However, with effect from 1 July 2009, 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 actually used for the provision of wholesale roaming calls within the Community by the relevant operator over the relevant period, aggregated on a per second basis adjusted to take account of the possibility for the operator of the visited network to apply an initial minimum charging period not exceeding 30 seconds.’;

5. Article 4 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘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 decrease to EUR 0,46 and EUR 0,43 and for calls received to EUR 0,22 and EUR 0,19, on 30 August 2008 and on 1 July 2009 respectively. The price ceiling for calls made shall further decrease to EUR 0,39 and EUR 0,35 and for calls received to EUR 0,15 and EUR 0,11 on 1 July 2010 and on 1 July 2011 respectively.’;

With effect from 1 July 2010, home providers shall not levy any charge from their roaming customers for the receipt by them of a roaming voicemail message. This shall be without prejudice to other applicable charges such as those for listening to such messages.

With effect from 1 July 2009 every home provider shall charge its roaming customers for the provision of any regulated roaming call to which a Eurotariff applies, whether made or received, on a per second basis.

By way of derogation from the third subparagraph, the home provider may apply an initial minimum charging period not exceeding 30 seconds to calls made which are subject to a Eurotariff.’;

(b) paragraph 4 is replaced by the following:

‘4. Any roaming customer may request, at any point after the process set out in paragraph 3 has been completed, to switch to or from a Eurotariff. Any switch must be made within one working day of receipt of the request and free of charge and shall not entail conditions or restrictions pertaining to other elements of the subscription, save that where a roaming customer who has subscribed to a special roaming package which includes more than one roaming service (namely, voice, SMS and/or data) wishes to switch to a Eurotariff, the home provider may require the switching customer to forego the benefits of the other elements of that package. A home provider may delay a switch until the previous roaming tariff has been effective for a minimum specified period not exceeding three months.’;

6. The following Articles are inserted:

‘Article 4a

Wholesale charges for regulated roaming SMS messages

1. With effect from 1 July 2009, 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 SMS message originating on that visited network, shall not exceed EUR 0,04 per SMS message.

2. The average wholesale charge referred to in paragraph 1 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.

3. The average wholesale charge referred to in paragraph 1 shall be calculated by dividing the total wholesale revenue received by the operator of the visited network from each operator of a home network for the origination and transmission of regulated roaming SMS messages within the Community in the relevant period by the total number of such SMS messages originated and transmitted on behalf of the relevant operator of a home network within that period.

4. The operator of a visited network shall not levy from the operator of a roaming customer's home network any charge, separate from the charge referred to in paragraph 1, for the termination of a regulated roaming SMS message sent to a roaming customer while roaming on its visited network.

Article 4b

Retail charges for regulated roaming SMS messages

1. Home providers shall make available to all their roaming customers, clearly and transparently, a Euro-SMS tariff as provided for in paragraph 2. The Euro-SMS tariff shall not entail any associated subscription or other fixed or recurring charges and may be combined with any retail tariff, subject to the other provisions of this Article.

2. With effect from 1 July 2009, the retail charge (excluding VAT) of a Euro-SMS tariff which a home provider may levy from its roaming customer for a regulated roaming SMS message sent by that roaming customer may vary for any roaming SMS message but shall not exceed EUR 0,11.

3. Home providers shall not levy any charge from their roaming customers for the receipt by them of a regulated roaming SMS message.

4. From 1 July 2009 home providers shall apply a Euro-SMS tariff to all existing roaming customers automatically, with the exception of such roaming customers who have already made a deliberate choice of a specific roaming tariff or package by virtue of which they benefit from a different tariff for regulated roaming SMS messages than they would have been accorded in the absence of such a choice.

5. From 1 July 2009 home providers shall apply a Euro-SMS tariff to all new roaming customers who do not make a deliberate choice to select a different roaming SMS tariff or a tariff package for roaming services which includes a different tariff for regulated roaming SMS messages.

6. Any roaming customer may request to switch to or from a Euro-SMS tariff at any time. Any switch must be made within one working day of receipt of the request and free of charge and shall not entail conditions or restrictions pertaining to elements of the subscription other than roaming. A home provider may delay such a switch until the previous roaming tariff has been effective for a minimum specified period not exceeding three months. A Euro-SMS tariff may always be combined with a Eurotariff.

7. No later than 30 June 2009, home providers shall inform all their roaming customers individually about the Euro-SMS tariff, that it will apply from 1 July 2009 at the latest to all roaming customers who have not made a deliberate choice of a special tariff or package applicable to regulated SMS messages, and about their right to switch to and from it in accordance with paragraph 6.

Article 4c

Technical characteristics of regulated roaming SMS messages

No home provider or operator of a visited network shall alter the technical characteristics of regulated roaming SMS messages in such a way as to make them differ from the technical characteristics of SMS messages provided within its domestic market.;

7. Article 5 is deleted;

8. Article 6 is replaced by the following:

'Article 6

Transparency of retail charges for regulated roaming calls and SMS messages

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

This basic personalised pricing information shall include the maximum charges the customer may be subject to under his tariff scheme for:

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

It shall also include the free of charge number referred to in paragraph 2 for obtaining more detailed information and information on the possibility of accessing emergency services by dialling the European emergency number 112 free of charge.

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 provide blind or partially-sighted customers with this basic personalised pricing information automatically, by voice call, free of charge, if they so request.

2. In addition to paragraph 1, customers shall have the right to request and receive, free of charge, and irrespective of their location within the Community, more detailed personalised pricing information on the roaming charges that apply in the visited network to voice calls, SMS, MMS and other data communication services, and information on the transparency measures applicable by virtue of this Regulation, by means of a mobile voice call or by SMS. Such a 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 and the Euro-SMS tariff, 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.

Home providers shall take the necessary steps to secure awareness by all their roaming customers of the availability of the Eurotariff and the Euro-SMS tariff. They shall in particular communicate to all roaming customers by 30 July 2007 the conditions relating to the Eurotariff and by 30 June 2009 the conditions relating to the Euro-SMS tariff, in each case in a clear and unbiased manner. They shall send a reminder at reasonable intervals thereafter to all customers who have opted for another tariff.;

9. the following Article is inserted:

'Article 6a

Transparency and safeguard mechanisms for regulated data roaming services

1. Home providers shall ensure that their roaming customers, both before and after the conclusion of a contract, are kept adequately informed of the charges which apply to their use of regulated data roaming services, in ways which facilitate customers' understanding of the financial consequences of such use and permit them to monitor and control their expenditure on regulated data roaming services in accordance with paragraphs 2 and 3.

Where appropriate, home providers shall inform their customers, before the conclusion of a contract and on a regular basis thereafter, of the risk of automatic and uncontrolled data roaming connection and download. Furthermore, home providers shall explain to their customers, in a clear and easily understandable manner, how to switch off these automatic data roaming connections in order to avoid uncontrolled consumption of data roaming services.

2. From 1 July 2009 at the latest, an automatic message from the home provider shall inform the roaming customer that he is roaming and provide basic personalised tariff information on the charges applicable to the provision of regulated data roaming services to that roaming customer in the Member State concerned, except where the customer has notified his home provider that he does not require this information.

Such basic personalised tariff information shall be delivered to the roaming customer's mobile telephone or other device, for example by an SMS message, an e-mail or a pop-up window on the computer, every time the roaming customer enters a Member State other than that of his home network and initiates for the first time a regulated 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 home provider that he does not require the automatic tariff information shall have the right at any time and free of charge to require the home provider to provide this service again.

3. By 1 March 2010, each home provider shall grant to all their roaming customers the opportunity to opt deliberately and free of charge for a facility which provides 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 does not exceed a specified financial limit.

To this end, the home provider shall make available one or more maximum financial limits for specified periods of use, provided that the customer is informed in advance of the corresponding volume amounts. One of these limits (the default financial limit) shall be close to, but not exceed, EUR 50 of outstanding charges per monthly billing period (excluding VAT).

Alternatively, the home provider may establish limits expressed in volume, provided that the customer is informed in advance of the corresponding financial amounts. One of these limits (the default volume limit) shall have a corresponding financial amount not exceeding EUR 50 of outstanding charges per monthly billing period (excluding VAT).

In addition, the home provider may offer to its roaming customers other limits with different, that is, higher or lower, maximum monthly financial limits.

By 1 July 2010, the default limit in the second and third subparagraphs shall be applicable to all customers who have not opted for another limit.

Each home provider shall also ensure that an appropriate notification is sent to the roaming customer's mobile telephone or other device, for example by an SMS message, an e-mail or a pop-up window on the computer, when the data roaming services have reached 80 % of the agreed financial or volume limit. Customers shall have the right to require their operators to stop sending such notifications and shall have the right at any time and free of charge to require the home provider to provide the service again.

When this financial or volume limit would otherwise be exceeded, a notification shall be sent to the roaming customer's mobile telephone or other device. This notification shall indicate the procedure to be followed if the customer wishes to continue provision of those services and the cost associated with each additional unit to be consumed. If the roaming customer does not respond as prompted in the notification received, the home provider shall immediately cease to provide and to charge the roaming customer for regulated data roaming services, unless and until the roaming customer requests the continued or renewed provision of those services.

From 1 November 2010, whenever a roaming customer requests to opt for or to remove a "financial or volume limit" facility, the change must be made within one working day of receipt of the request, free of charge, and shall not entail conditions or restrictions pertaining to other elements of the subscription.

4. With effect from 1 July 2009:

- (a) 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 regulated data roaming services by means of that visited network shall not exceed a safeguard limit of EUR 1,00 on 1 July 2009, EUR 0,80 on 1 July 2010 and EUR 0,50 on 1 July 2011 per megabyte of data transmitted. The application of this safeguard limit shall not lead to any distortion or restriction of competition in the wholesale data roaming market in accordance with Article 8(2)(b) of the Framework Directive;
- (b) this 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;
- (c) the average wholesale charge referred to in point (a) shall be calculated by dividing the total wholesale revenue received by the operator of the visited network from each operator of a home network for the provision of regulated data roaming services in the relevant period by the total number of megabytes of data actually consumed by the provision of those services within that period, aggregated on a per kilobyte basis.;

10. Article 7 is amended as follows:

(a) 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 3, 4, 4a, 4b and 6a, publicly available in a manner that enables interested parties to have easy access to it.;

(b) paragraph 5 is replaced by the following:

'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 the Access Directive to ensure adequate access and interconnection in order to guarantee the end-to-end connectivity and interoperability of roaming services, for example where subscribers are unable to exchange regulated roaming SMS messages with subscribers of a terrestrial mobile network in another Member State as a result of the absence of an agreement enabling the delivery of those messages.;

11. Article 9 is replaced by the following:

'Article 9

Penalties

Member States shall lay down the rules on penalties applicable to infringements 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 no later than 30 March 2008 or, in the case of the additional requirements introduced in Article 3(2) and (3), Article 4(2) and (4) and Articles 4a, 4b, 4c, 6, 6a and 7 by Regulation (EC) No 544/2009 (*), no later than 30 March 2010 and shall notify it without delay of any subsequent amendment affecting them.

(*) OJ L 167, 29 June 2009, p. 12.;

12. Article 11 is replaced by the following:

'Article 11

Review

1. The Commission shall review the functioning of this Regulation and, after a public consultation, shall report to the European Parliament and the Council no later than 30 June 2011. The Commission shall evaluate in particular whether the objectives of this Regulation have been achieved. In so doing, the Commission shall review, inter alia:

- the developments in wholesale and retail charges for the provision to roaming customers of voice, SMS and data communication services, and the corresponding development in mobile communications services at domestic

level in the Member States, both for pre-paid and post-paid customers separately, and in the quality and speed of these services,

- the availability and quality of services including those which are an alternative to roaming (voice, SMS and data), in particular in the light of technological developments,
- the extent to which consumers have benefited through real reductions in the price of roaming services or in other ways from reductions in the costs of the provision of roaming services and the variety of tariffs and products which are available to consumers with different calling patterns,
- the degree of competition in both the retail and wholesale markets, in particular the competitive situation of smaller, independent or newly started operators, including the competition effects of commercial agreements and the degree of interconnection between operators.

The Commission shall also assess methods other than price regulation which could be used to create a competitive internal market for roaming and in so doing shall have regard to an analysis carried out independently by a body of European regulators for electronic communications. On the basis of this assessment the Commission shall make appropriate recommendations.

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

Done at Brussels, 18 June 2009.

For the European Parliament
The President
H.-G. PÖTTERING

For the Council
The President
Š. FÜLE

2. In addition, the Commission shall, no later than 30 June 2010, prepare an interim report to the European Parliament and the Council, which shall include a summary of the monitoring of the provision of roaming services in the Community and an assessment of the progress towards achieving the objectives of this Regulation, including by reference to the matters referred to in paragraph 1.;

13. in Article 12 the text 'no later than 30 August 2007' is deleted;

14. in Article 13 '2010' is replaced by '2012'.

Article 2

Amendment to Directive 2002/21/EC

Article 1(5) of Directive 2002/21/EC is replaced by the following:

'5. This Directive and the Specific Directives shall be without prejudice to any specific measure adopted for the regulation of international roaming on public mobile communications networks within the Community.'

Article 3

Entry into force

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