

May 2016

The review of national wholesale roaming markets and the Roaming Regulation

This briefing is one of a series of 'Implementation Appraisals', produced by the European Parliamentary Research Service (EPRS), on the operation of existing EU legislation in practice. Each such briefing focuses on a specific EU law which is, or will shortly be, subject to an amending proposal from the European Commission (EC), intended to update the current text. 'Implementation Appraisals' aim to provide a succinct overview of material publicly available on the implementation, application and effectiveness of an EU law to date – drawing on available inputs from, inter alia, the EU institutions and advisory committees, national parliaments, and relevant external consultation and outreach exercises. They are provided to assist parliamentary committees in their consideration of the new Commission proposal, once tabled.

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| EP committee responsible at time of adoption of the EU legislation: Industry, Research and Energy (ITRE). |
| Date of adoption of original legislation ¹ in plenary: 10 May 2012. |
| Entry into force: Regulation 531/2012 entered into force on 1 July 2012 ² and is set to expire (sunset clause) on 30 June 2022 (Article 22). The Regulation was amended by Regulation 2015/2120 . ³ The latter entered into force on 29 November 2015 (Article 10) and is applicable as of 30 April 2016, with the exception of certain provisions. |
| Planned date for review of legislation: one of the amendments to the original act concerns the arrangements made for a review of the Regulation (Article 19). The new requirements (Article 19 of Regulation 2015/2120) state that the European Commission should initiate a review of the wholesale roaming markets by 29 November 2015 to establish whether specific measures are needed for a complete abolition of retail roaming surcharges from 15 June 2017. |
| Timeline for new amending legislation: the results of the above-mentioned review of the wholesale roaming markets should be presented to the co-legislators by 15 June 2016 . The report should be accompanied by a proposal to amend wholesale charges or put forward any other solution to ensure the abolition of retail roaming charges in 2017. |

1. Background

International mobile roaming charges are linked to the cost of making and receiving calls, sending and receiving text messages (SMS) and using data on a mobile phone while abroad. Roaming charges can be further distinguished between retail roaming charges, namely those levied on customers by their respective mobile operators when they travel abroad, and wholesale roaming charges, i.e. the charges that a mobile operator (often referred to as the 'home operator') pays to its counterparts (the 'visited operators') located in another country when its customers roam on the visited operators' networks. Mobile roaming is currently regulated in the European Union but also in other countries, as it is commonly observed that the price of international roaming is high and often well above the cost incurred by mobile operators to allow

¹[Regulation 531/2012](#) of the European Parliament and of the Council on roaming on public mobile communications networks within the Union.

² Note that the Regulation [repealed](#) the [first Roaming Regulation 717/2007](#).

³ Regulation 2015/2120 of the European Parliament and of the Council laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union.

their customers to use their phones while abroad.⁴ The regulation of intra-EU roaming has been undertaken in several waves.⁵ The first Roaming Regulation 717/2007 (Roaming I) introduced wholesale and retail caps for incoming and outgoing voice calls. These caps were set to decrease on a yearly basis. Roaming II ([Regulation 544/2009](#)) introduced wholesale and retail caps for SMS and wholesale caps for data services; it also included specific protection mechanisms against 'bill shocks'. Roaming III (Regulation 531/2012) introduced retail price caps for data services, and lowered the existing caps for voice and SMS even further. More importantly, it introduced the possibility for consumers to decouple roaming mobile traffic from domestic plans (i.e. to purchase roaming services from an operator other than their home operator). The text also set out additional reporting and data collection obligations for the [Body of European Regulators for Electronic Communications](#) (BEREC) so as to gather the necessary evidence for monitoring the implementation of the existing legislation.

In the [Connected Continent package](#) of September 2013, the European Commission announced its intention to gradually phase out retail roaming surcharges by 2018 at the latest. The European Parliament initially reacted to this proposal by calling for an [earlier abolition of retail roaming](#) in December 2015. Following protracted negotiations between the co-legislators,⁶ it was eventually agreed that retail roaming charges would continue decreasing and ultimately disappear on 15 June 2017, provided pending questions regarding wholesale roaming markets were addressed. The latter are the subject of the present briefing.

THE FUNCTIONING OF WHOLESALE ROAMING

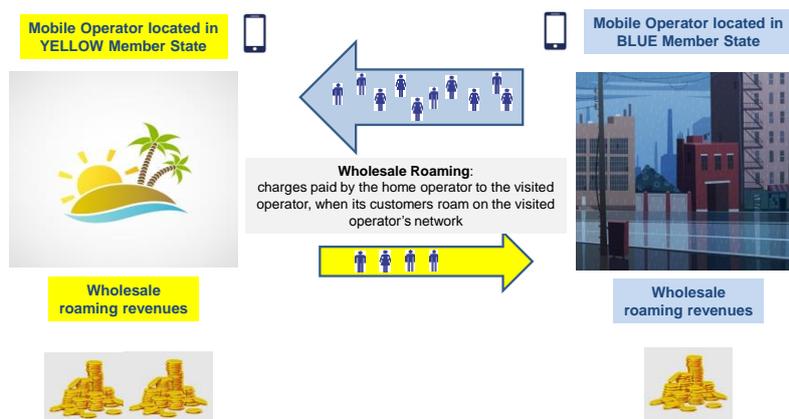


Figure 1: The functioning of the wholesale roaming markets
Source: Lott and Schrefler/Fotolia©

The figure above provides a simplified illustration of the **functioning of wholesale roaming markets**. In this hypothetical example there are two mobile operators (Yellow and Blue) located in two different EU Member States. The roaming traffic of their respective clients is represented by the individuals inside the arrows at the centre of the diagram. The size of the arrows also indicates that the mobile operator located in the Blue Member State has more of its customers roaming on the network of the operator located in the Yellow Member State, than the other way around.⁷ As a result, the wholesale roaming revenues of the

⁴ On this point see the following reports from the International Telecommunication Union (ITU) [International mobile roaming services: facilitating competition and protecting users](#) (November 2013) and [Regulatory analysis of international mobile roaming services](#) (March 2014).

⁵ For an overview of the evolution of the Roaming Regulation until the publication of the Connected Continent legislative package, see EPRS [A roaming-free Europe in 2015](#), 7 October 2013.

⁶ On this point see Draft Statement of the Council's Reasons, 23 September 2015, 2013/0309 (COD).

⁷ From the perspective of the Blue mobile operator these clients are 'outbound roamers'; conversely they are 'inbound roamers' for the Yellow operator. For a comprehensive description of the main concepts and terms in international roaming see ITU (2014), *Ibid.*

mobile operator located in the Yellow Member State are higher than those of the mobile operator from the blue Member State. In more technical terms, the Yellow operator has a 'net inbound position', while the Blue operator holds a 'net outbound position'.

The Roaming Regulation has brought tangible benefits to European consumers.⁸ Recent Commission estimates indicate an 80% reduction in retail prices for mobile roaming services since 2007 and total savings of €9.6 billion between 2009 and 2013. As of 30 April 2016, EU consumers using their mobile phones in another EU Member State will pay the domestic price plus €0.05 per minute for an outgoing voice call; €0.0114 per minute for receiving a phone call while abroad; the domestic price plus up to €0.02 per outgoing text message sent; and the domestic price plus up to €0.05 per megabyte when downloading data or browsing the Internet in another Member State.⁹

2. EU-level reports, evaluations and studies

How to build a ubiquitous EU digital society, Study for the European Parliament, November 2013

Commissioned by the Committee on Industry, Research and Energy (ITRE), this [study](#) took stock of the achievements, failures and pending challenges of the EU regulatory framework for electronic communications, and assessed the costs and benefits of specific policy interventions in the digital sector, including roaming.¹⁰ The study drew on desk research, collection and analysis of publicly available data, and on a series of interviews to fill data gaps.

Overall, the study noted that the EU telecommunication sector was still fragmented, resulting in missed economic and societal opportunities for Europe, and a Digital Single Market that was still far from completion.¹¹ The applicable regulatory framework had also contributed to this situation.¹² For instance, while positive results had been achieved in terms of ensuring a certain level of regulatory consistency, less attention had been devoted to measures fostering cross-border service provision and usage.¹³ In fact, the report noted that the very existence of the Roaming Regulation was an indicator that the EU regulatory framework did not lead to the extensive development of pan-European and borderless services.¹⁴

On the Roaming Regulation itself the study concluded that the legislation had been effective in lowering excessive retail and wholesale prices.¹⁵ However, it also indicated that the observed additional usage of voice services by consumers was lower than might have been expected. More importantly, the Regulation did not manage to foster the competitive dynamics that would be necessary to eventually abolish the Regulation.¹⁶ In this respect, the study expected the proposed approach to roaming set out in the Connected Continent package to be ineffective. While it would strengthen the creation of a Single Market space from the consumers' perspective, it could also undermine the structural solutions enacted by operators in 2012 to comply with previous rules. In addition, it would risk overlapping with other

p. 20-21. Note also that a higher number of customers does not necessarily equate with greater traffic, but we assume that this is the case in this simplified example.

⁸ For further details, see the [Infographic on roaming charges in the EU](#) published by the European Parliament and the dedicated European Commission [webpage](#).

⁹ Note that all prices exclude VAT.

¹⁰ Note that the scope of the study is very broad and also includes an assessment of and recommendations on the Connected Continent package that had been published at the time the study was drafted. The present briefing only focuses on the sections related to the Roaming Regulation.

¹¹ On this point see EPRS, [Mapping the Cost of Non-Europe, 2014-2019](#) (July 2014) and [The Cost of Non-Europe in the Single Market, Part III – Digital Single Market](#) (September 2014).

¹² For further details see, for instance Section 3 of the study.

¹³ *Ibid.*, p. 49.

¹⁴ *Ibid.*, p. 106.

¹⁵ *Ibid.*, Section 3.6. Note that the study also mentioned that in the early years of application of the Roaming Regulation, prices for voice calls and SMS did not become competitive enough 'to spontaneously lead to prices significantly below the mandated caps', *Ibid.* p. 89.

¹⁶ *Ibid.*, p.95. Note that the consultants added that at the time of writing the study 'nobody knows how to do to that'.

components of the regulatory framework for electronic communications thus adding additional layers of complexity.¹⁷ The study also expressed doubts as to whether the Regulation would actually incentivise operators to form roaming alliances in order to drive prices down. It also recalled the more general risk involved in controlling prices without a complete overview of the underlying costs and of other elements such as domestic mobile termination rates.

Report from BEREC on the impacts of 'Roam Like at Home', 17 December 2014¹⁸

This report was based on the EP [resolution](#) of 3 April 2014, which recommended replacing the EC's roaming proposals with a Roam Like at Home (hereinafter RLAH) scenario, with a fair use limit, abolishing retail roaming surcharges in order to allow customers to use the same level of domestic services abroad, up to a certain point. In response to the EP resolution, on 9 April 2014 the EC asked BEREC for advice on the state of the wholesale roaming market and on the possibility of implementing a fair use policy.

The report was based on BEREC's understanding of RLAH, whereby all retail surcharges are removed when a consumer travels abroad. BEREC's findings were based on contributions to a questionnaire from the national regulatory authorities (NRAs), operators and stakeholders. The aim of the report was to aid the EC and co-legislators in making informed decisions as well as to facilitate the transition to a roaming-free Europe.

The report concluded that a RLAH scenario was neither sustainable nor feasible for structural reasons that would ultimately lead to policy trade-offs.¹⁹

In particular, the report indicated that a RLAH scenario would lead to increased use of roaming services by consumers, while mobile providers would no longer have revenues from retail roaming surcharges despite their wholesale roaming costs increasing. Consequently, visited markets would have the increased burden of providing roaming services and would require increased investment owing to the higher demand.²⁰

In addition, there were still large structural differences among Member States when it came to mobile services, such as retail prices and roaming packages offered to customers, the cost of providing services, levels of consumption, travel patterns and the amount of prepaid as opposed to post-paid customers. These structural differences implied that a common RLAH policy applicable to all Member States would be difficult. Such a policy would also inevitably lead to trade-offs between protecting consumer interests and promoting competition and investment, as well as preventing distortions to the competitive market.²¹ Some of these trade-offs can be found in Figure 2 below.

Figure 2: Policy trade-offs under a RLAH scenario

| | | |
|--|---------------|--|
| <ul style="list-style-type: none"> ▪ Big operators ▪ Roaming customers from country Y in country X ▪ Roaming customers from country Y ▪ Aim of lowest cost for customers ▪ Size of traffic in home networks | versus | <ul style="list-style-type: none"> ▪ Small operators²² ▪ Domestic customers in country X²³ ▪ Domestic customers in country Y²⁴ ▪ Aim of sufficient quality of services ▪ Size of traffic in visited networks |
|--|---------------|--|

¹⁷ According to the study the previous versions of the Regulation did not have such an effect as they were 'surgical additions' to the existing framework.

¹⁸ BEREC report [International Roaming: Analysis of the impacts of 'Roam Like at Home' \(RLAH\)](#), BoR (14) 209. See also BEREC's [views on the EP's proposal](#).

¹⁹ *Ibid*, p. 4.

²⁰ *Ibid*.

²¹ *Ibid*, p. 13.

²² Big operators have both greater negotiating power and greater capacity to internalise costs than small operators.

²³ If the cost of serving a high number of incoming roamers to country X is not fully recovered by the local operators under RLAH, this might lead operators to penalise their domestic customers to compensate for the loss of wholesale roaming revenues.

²⁴ Under an RLAH scheme, costs for the domestic users in a given country might increase on account of the loss of roaming revenue and local operators' inability to recover wholesale costs of their outbound roamers.

The report went on to claim that there were, however, fair usage limits (FULs), retail pricing structures and wholesale roaming caps that could lessen the impact of these policy trade-offs. The report detailed various scenarios and the risks that would accompany them. The analysis indicated that the most viable option in the short term would be a scenario including a zero retail roaming surcharge for the consumer using mobile services abroad, up to a certain FUL. Once the FUL was reached, the consumer would be charged a surcharge or a daily or weekly flat rate fee. While this scenario/option would lead to the abolition of retail surcharges, it would not be sustainable in the medium term owing to the present-day differences between retail and wholesale roaming charges.²⁵ Neither would this be sustainable for the long term in the light of structural differences and because of the pending issues in the **wholesale roaming market**, which should be tackled by the forthcoming proposal.²⁶

Finally, the report recalled that the overall objective of a RLAH scenario should be to ensure cost recovery and to minimise distortions to home as well as visited domestic markets.²⁷

BEREC Report on the wholesale roaming market, 12 February 2016²⁸

By 15 June 2017 roaming retail surcharges will be abolished up to a fair use limit that is to be determined,²⁹ subject to pending issues in the wholesale roaming market having been resolved. In the meantime, the European Commission has been tasked with carrying out a review of the wholesale roaming market to identify these issues, and to make proposals on how to resolve them by the date given above. It therefore conducted a public consultation from 26 November 2015 to 18 February 2016.³⁰ This report is BEREC's response to the consultation, the aim being to support the European Commission and the co-legislators in their decision-making process. In order to formulate its answer, BEREC sent a questionnaire to NRAs and operators.

The report finds that, on the one hand, wholesale charges should be low enough to allow for the abolition of retail roaming surcharges, protect competition and prevent retail price increases for domestic customers at home. On the other hand, wholesale charges should be high enough to enable network operators to recover costs, for visited network operators to still receive a return on investment, to prevent retail price increases for domestic customers in the visited network and to diminish negative impacts on competition for Mobile Virtual Network Operators (MVNOs)³¹ in visited markets. Overall, the report indicates that a RLAH scenario should aim at minimising imbalances between home and visited networks.³²

The report goes on to explain that structural issues, such as travel patterns, have still to be dealt with. By way of example, certain Member States have higher inbound roaming traffic than outbound roaming traffic, as shown in Figure 1. This difference is usually exacerbated during the high tourism season, whereby local operators in countries with a high number of inbound roamers may not be able to fully recover their costs under a RLAH scenario. Other structural elements that are crucial for addressing pending issues in the wholesale markets include for instance the fact that current wholesale data caps are higher and more regulated than average wholesale tariffs. There are also still large differences in domestic prices and various

²⁵ Currently, wholesale roaming charges are higher than retail roaming charges.

²⁶ At the moment, wholesale roaming caps are included under Roaming III and they are based on conservative estimates of maximum wholesale costs. These costs must be assessed to see if a competitive situation has occurred in retail and wholesale markets and to observe the development of wholesale charges, in order to put in place adequate solutions to abolish retail roaming charges in 2017.

²⁷ Ibid p. 14.

²⁸ [BEREC Report on the wholesale roaming market](#), BoR (16) 33.

²⁹ Note that the Regulation plans for a fair use policy and a sustainability mechanism ensuring appropriate cost recovery and sustainability for mobile operators to be established by means of dedicated implementing acts by 15 December 2016. More details on these elements are provided in the following sections of the present briefing.

³⁰ For further details on the consultation itself, see Section 4 below.

³¹ MVNOs use the structure of Mobile Network Operators (MNOs) to function.

³² Ibid, p. 4.

forms of RLAH schemes,³³ including differing fair use limits. In terms of mobile operators, the report noted that mobile network operators (MNOs) and MVNOs engage in bilateral wholesale agreements with various pricing options. It appears however that MVNOs have not necessarily benefitted from lower wholesale tariffs because of their relatively weaker negotiating power in comparison with larger networks.

To conclude, BEREC details a preliminary assessment of viable scenarios to resolve potential issues in the wholesale roaming market in view of the abolition of retail roaming charges in 2017. As the table below illustrates, BEREC examines five main questions (i.e. adoption of a wholesale per unit cap at EU level; adoption of wholesale per unit caps at Member State level; options for fair use policy; adoption of wholesale caps based on capacity; and the regulation of MVNOs), each accompanied by potential scenarios for implementation.³⁴ The report also offers a comprehensive analysis of the advantages and disadvantages of each scenario, as summarised below.

Table 1: BEREC Preliminary assessment of some scenarios

| Wholesale Regulation | | Description | Pros | Cons |
|-------------------------------------|--|---|---|---|
| Wholesale per unit cap at EU level | Roaming III cap level | No change in wholesale regulation compared with current caps | <ul style="list-style-type: none"> – Rewards competitive and efficient operators – Allows for cost recovery – No indirect regulation of access market | <ul style="list-style-type: none"> – Competition distortion risk at home – Doesn't take into account cost differences across Member States – Possible increase in retail prices at home (even for non-roamers) |
| | Cap = maximum LRAIC ³⁵ + estimated cost in Europe | Cut in per unit wholesale cap to equal maximum wholesale cost of providing roaming services | <ul style="list-style-type: none"> – Allows for cost recovery – Enables competition – Reduces risk of an increase in retail prices at home (even for non-roamers) – Reduces risk of distorted competition at home | <ul style="list-style-type: none"> – Doesn't take into account cost differences across Member States – Risk of increase in retail prices at home where retail prices are very low (even for non-roamers) – Risk of competition distortion at home – Risk that in some home markets the RLAH usage would deter investments |
| | Cap = average LRAIC + estimated cost in Europe | Cut in per unit wholesale cap to equal average cost of providing roaming services | <ul style="list-style-type: none"> – Allows for cost recovery – Enables competition – Reduces the risk of an increase in retail prices at home (even for non-roamers) – Reduces the risk of competition distortion at home | <ul style="list-style-type: none"> – Risk of distortion in some visited countries owing to the lack of cost recovery – Possible reduction in incentives to invest in roaming services provision – De facto regulation, lack of entry to local markets and free riding on existing networks possible – Possible increase in retail prices in visited market – Possibility that MNOs might refuse to sell roaming services |
| | Cap = minimum LRAIC + estimated cost in Europe | Cut in per unit wholesale cap to equal minimum cost of providing roaming services | <ul style="list-style-type: none"> – Low risk of increase in retail prices at home (even for non-roamers) – Low risk of competition distortions at home – Roaming volume in retail offers likely to be high – National MVNOs not disadvantaged vis à vis MNOs | <ul style="list-style-type: none"> – Potentially large distortion in some countries – Risk of retail price increase in visited market – Risk of entry to local markets and free riding on existing networks at tariff under cost for visited MNOs – No incentive to invest – Very high risk that MNOs will refuse to sell retail roaming services |
| Wholesale per unit caps per country | LRAIC + estimated cost | Caps based on estimated cost of providing roaming services in EEA country | <ul style="list-style-type: none"> – Replicates the costs in visited markets – Allows for cost recovery in all Member States – Lowers the risk of competition distortion at home and retail price increase | <ul style="list-style-type: none"> – Highly likely impact on competition in visited markets – Risk of margin squeeze for home operators – Risk of no cost recovery for some visited operators |

³³ For instance Annex 2 of the Report shows that in France six operators already offer RLAH tariff plans, while only one operator in Bulgaria does so.

³⁴ Note that this analysis answers some of the objections raised by DG EPRS in its [Initial appraisal of a European Impact Assessment: European Commission proposal on a European single market for electronic communications and to achieve a Connected Continent](#).

³⁵ Long Run Average Incremental Cost (LRAIC). In its report [Regulatory Accounting in Practice 2015](#), p.73, BEREC defines the Long Run Incremental Cost (LRIC) as 'the cost of producing a specific additional increment of a given service in the long run (the period over which all costs are variable) assuming at least one other increment is produced'. It goes to explain that LRAIC is 'a form of LRIC where the Increment is a whole group of services', in this case those related to roaming under a RLAH scenario.

| | | | | |
|---|--|--|---|---|
| | LRAIC + estimated cost + a mark-up ³⁶ | Estimates of providing roaming services in each EEA country with a mark-up | <ul style="list-style-type: none"> – Replicates costs in the visited markets – Allows for cost recovery in each Member State – Reduces the risk of competition distortion at home and retail price increase | <ul style="list-style-type: none"> – Risk of de facto regulation of national wholesale markets – Risk of margin squeeze for home operators – Risk of no cost recovery for visited operators if the mark-up is too low |
| Wholesale Fair Use Policies (FUPs) | Possibility of setting higher wholesale cap if FUPs are reached | Operators would be allowed to apply wholesale FUPs | <ul style="list-style-type: none"> – Limits the de facto regulation of domestic access market – Avoids the risk of permanent roaming³⁷ – Up to operators to implement it | <ul style="list-style-type: none"> – Regulated wholesale caps within and outside the wholesale FUP would be difficult to set and burdensome for visited operators – Need to monitor each visited SIM card in the network |
| Capacity based wholesale caps | Wholesale roaming caps based on the bandwidth and not on a price per minute, SMS or MB | Visited operators would be required to make an offer based on capacity. The offer should be monthly owing to the fluctuating nature of roaming | <ul style="list-style-type: none"> – Allows prices and costs to meet – Minimises margin squeeze situations for home network because of data consumption increase – Encourages widespread adoption of roaming in wholesale flat-rate offers | <ul style="list-style-type: none"> – Very complex to implement – Requires two different kinds of billing system – Traffic flow uncertainty – Necessary capacity for visiting operators unknown – Entry barriers potentially higher for small operators |
| MVNO regulation | Discounts passed onto the MVNO | MNOs obliged to pass their discounts from the visited networks for roaming services onto the MVNOs | – Sustainable and competitive for MVNOs | <ul style="list-style-type: none"> – Difficult to verify by regulators – Risk of increasing domestic wholesale tariff conditions of MVNOs – Intrusive |
| | MNOs include RLAH in their wholesale offer to MVNOs | MVNOs possibly obliged to include RLAH in their wholesale offer to MVNOs | – Sustainable and competitive for MVNOs | <ul style="list-style-type: none"> – Risk of increasing domestic wholesale tariff conditions of MVNOs – Intrusive |
| | MNO supplies all services needed at wholesale charges | Includes wholesale tariffs for services needed to comply with retail roaming regulation | – Sustainable and competitive for MVNOs | <ul style="list-style-type: none"> – Risk of increasing domestic wholesale tariff conditions of MVNOs – Intrusive |

Source: Authors' elaboration on BEREC (2016), pp. 31–36.

Lastly, BEREC finds that given the issues set out, the task of finding a balanced solution for home and visited markets will be rather difficult and compromises will have to be made.³⁸

3. European Parliament activities

[European Parliament resolution of 12 September 2013 on the Digital Agenda for Growth, Mobility and Employment: time to move up a gear](#)

The Parliament emphasised the detriment to growth resulting from the cost of mobility within the EU. It therefore stressed that abolishing roaming charges was crucial to facilitating an internal digital market in which competition was encouraged and there was no differentiation between national and roaming tariffs. Ultimately, it called for the gap between national and roaming tariffs to be removed by 2015.

Members' questions

A number of questions about roaming have been tabled since the current parliamentary term began in 2014. For clarity purposes, the questions have been grouped into similar themes.

Questions on the fair use clause

[Written question by José Blanco López \(S&D, Spain\)](#), 1 March 2016

The MEP pointed out the expected exponential rise in the consumption of audiovisual content on mobile devices given the end of roaming charges, and noted that the Commission had been asked to set out the details of the fair use limit. The MEP asked the Commission what safeguards it planned to adopt to ensure

³⁶ Cost plus regulation.

³⁷ 'Permanent roaming' is a situation where either a customer buys a SIM card in another Member State with cheaper domestic prices to use at home, or when a customer permanently lives abroad with a domestic plan from their home country. See European Commission's [press release](#).

³⁸ For more information see [International Roaming BEREC Benchmark Data Report April – September 2015, BoR \(16\) 28-1](#).

compatibility between the expected increase in data consumption and the introduction of the fair use clause.

[Answer given by Digital Economy and Society Commissioner Günther Oettinger on behalf of the Commission](#), April 2016

The Commissioner indicated that the Commission was taking into account the expected increase in roaming data services under a RLAH scenario in its ongoing review of wholesale roaming markets. He also recalled that additional implementing acts on the implementation of a fair use policy and a sustainability mechanism were to be adopted by 15 December 2016. He stressed however that the rationale behind a fair use policy was to prevent the 'abusive and anomalous use of roaming'. This however should not prevent consumers under a RLAH scenario from mobile phone usage consistent with their existing tariff plan.

[Written question by Tonino Picula \(S&D, Croatia\)](#), 1 March 2016

The MEP inquired as to what steps the Commission would take to ensure that the rules on fair use set out clear-cut mechanisms for assessing how the abolition of roaming surcharges would affect the sustainability of a given operator's domestic charging model, bearing in mind that the limits set were many times higher than the rates applicable in the new Member States.

[Answer given by Mr Oettinger on behalf of the Commission](#), May 2016

In its answer the Commissioner confirmed that these elements were covered in the public consultation closed on 18 February 2016 and in the ongoing analyses supporting the forthcoming proposal. In particular, the sustainability mechanism to be adopted by 15 December 2016 was intended precisely to allow for derogations to the regulation in exceptional cases, so as to ensure that domestic charging models remained sustainable and did not lead to price increases for home consumers in certain Member States.

Questions on enforcement or lack thereof

[Written question by Cătălin Sorin Ivan \(S&D, Romania\)](#), 3 February 2016

The MEP asked the Commission what measures it intended to take if mobile phone companies did not observe the protocol, i.e. they did not begin decreasing roaming charges in April 2016 and abolish them completely from 15 June 2017. The MEP also asked what position the Commission would adopt if mobile phone companies were to consider strategies allowing them to add extra charges to make up for decreased revenue.³⁹

[Answer given by Mr Oettinger on behalf of the Commission](#), April 2016

In his answer the Commissioner emphasised that EU mobile operators must comply with the new EU rules as set out in the Roaming Regulation adopted by the EU legislators. As stated in the Regulation, extra charges for intra-EU roaming services would be allowed from 30 April 2016 to 14 June 2017. As of 15 June 2017 extra charges for intra-EU roaming services would be allowed for roaming consumption in excess of fair use limits and in exceptional cases to be decided by the NRAs. In case of a breach of protocol, NRAs would have the power to handle cases where any obligations under the regulation were not followed.

Questions on the protection of consumer interests

[Written question by Catherine Bearder \(ALDE, United Kingdom\)](#), 5 November 2015

The MEP asked the Commission whether it was aware that claims had been made that eliminating roaming charges would drive up domestic phone bills and penalise those who did not travel. The MEP asked the Commission to give an estimate of the total savings to EU consumers from caps on roaming since they were introduced in 2009. The MEP also asked if the Commission could give an estimate of what the annual savings to EU consumers would be once roaming charges are phased out altogether.

[Answer given by Mr Oettinger on behalf of the Commission](#), January 2016

³⁹ On a different but related note, [Marlene Mizzi \(S&D, Malta\)](#) raised the issue of consumers having packages or contracts imposed on them that they have not chosen in connection with the forthcoming abolition of roaming charges. In his [reply](#), the Commissioner explained that while the new Roaming Regulation does not limit the general freedom of private companies to determine their tariff plans, the rights of consumers, including terminating a contract free of charge in the event of increased tariffs, are protected under Article 20(2) of the Universal Service Directive (USD).

The Commissioner underlined that total savings for EU consumers from the reduction of roaming charges (calls made, calls received, SMS and data) between the third quarter 2009 to the third quarter of 2013 was estimated at about €9.6 billion. The Commissioner stated that in the [impact assessment](#) accompanying the Commission's Connected Continent proposal, the overall reduction in user bills resulting from the introduction of voluntary RLAH in a static scenario with fixed roaming volumes was estimated to be €1.65 billion. As data consumption had increased considerably since 2013, and since a significant additional increase in roaming consumption under RLAH now mandated under Regulation 2015/2120 was expected, the actual benefits to end users could be expected to be higher. The Commissioner further noted that since EU regulations have been introduced to reduce roaming charges, domestic mobile prices have been decreasing.

[Written question by João Ferreira \(GUE/NGL, Portugal\)](#), 16 July 2015

The MEP asked the Commission whether it could confirm that there was risk that the charges paid by the general public in southern European countries would increase as a result of the end of roaming charges. And if so, the MEP asked what measures would be put in place to eliminate this risk. The MEP also asked what solutions would be found to cope with increased pressure on existing networks as a result of the end of roaming charges, specifically regarding the investment necessary to increase network capacity.

[Answer given by Mr Oettinger on behalf of the Commission](#), October 2015

In his answer the Commissioner denied there was a risk of a rise in mobile phone prices as a result of the progressive elimination of roaming, and pointed out that additional safeguards were in place to prevent that from happening. The Commissioner then stated that the continued spread of smart devices and the availability of new services were likely to be the main driving forces for increased domestic demand, rather than the end of roaming. He went on to say that developments in technology — such as Long Term Evolution (LTE) networks further reducing data transmission costs — would influence the supply side from a technological perspective. Investment decisions were therefore likely to be based on considerations related to the balance between additional revenues from the domestic mobile services that are on average 95% of all mobile revenues and the cost of new network investments to increase capacity.

European Parliament: petitions and citizen's enquiries (AsKEP) on roaming

The European Parliament received four petitions on roaming in 2015⁴⁰ and another four in previous years.⁴¹ Although the petitioners' requests came from different Member States and varied in their formulation, all called for the abolition of retail roaming charges. Some of the more recent petitions also criticised the postponement to 2017 of the initial date put forward by the European Parliament (i.e. December 2015) for eliminating retail roaming.⁴²

The Parliament's Citizens' Enquiries Unit (AsKEP) received 10 questions on roaming between January and December 2015.⁴³ In this case again, the vast majority of queries were about the abolition of retail roaming charges in the EU and access to documents and/or additional information on the negotiations that led to the postponement of the initial deadline.

4. European Commission stakeholder consultations

As indicated in Article 19 of the amended Roaming Regulation,⁴⁴ the European Commission has to consult stakeholders prior to publishing any legislative proposal on possible arrangements/measures to ensure the elimination of retail roaming charges from 15 June 2017. A [public consultation on the review of national wholesale roaming markets](#) therefore ran between 26 November 2015 and 18 February 2016. The

⁴⁰ Namely Petition Nos 0516/2015 (UK); 0484/2015 (DE); and 0483/2015 (LU); 0222/2015 (DE).

⁴¹ Petition Nos 0829/2014 (ES); 0640/2011 (PT); and 1635/2010 (IE) – requesting the introduction of caps for roaming charges – and No 0054/2009 (FR) on the incompatibility between Internal Market principles and the first Roaming Regulation.

⁴² On a slightly different but related topic, one petition (No 1537/2013-DE) reported the case of roaming traffic on a professional phone being billed on the basis of a fixed rate above the caps foreseen at the time by the Roaming Regulation.

⁴³ To the best of our knowledge, no roaming-related questions had yet been received in 2016 at the time of writing this briefing.

⁴⁴ Regulation 2015/2120.

consultation questionnaire was structured around three parts, reflecting the three central themes for a potential review of the Regulation: 1) the review of wholesale roaming markets in the EU to ascertain whether they function well enough to sustain the abolition of retail roaming charges and if not, what remedies would be necessary to address this problem; 2) fair use policy and 3) the methodology to establish whether the domestic price model of a given operator was threatened by the abolition of retail roaming charges.

The Commission received 92 answers to the consultation from 25 Member States and from Norway. At the time of writing this briefing only a preliminary [summary of the responses received](#) was available on the European Commission's webpage and not a separate report as would usually be the case. Nearly 35% of respondents were mobile operators, followed by individuals in their personal capacity (27%),⁴⁵ MVNOs (9%), consumer or user associations (8%),⁴⁶ NRAs (nearly 7%),⁴⁷ businesses (5%),⁴⁸ government authorities (3%) and other smaller or miscellaneous categories of respondents.

On the state and **functioning of EU wholesale roaming markets**⁴⁹ the consultation asked which of a series of markets (i.e. voice, SMS, data) was functioning well in the EU and which did not function properly. The answer options also offered the possibility to indicate that the functioning of these markets varied depending on the Member State visited. Respondents were also asked (see, for instance, question 6) to provide practical examples and evidence to support their answers. In addition, this section of the consultation contained specific questions for mobile operators in order to shed light on their commercial and technical decisions on roaming (e.g. how they negotiate with other operators, whether they use roaming traffic steering techniques, on the potential impact of RLAH on national wholesale roaming markets, on competition, and so on).

The preliminary feedback received on these questions highlights the **coexistence of different views on the functioning/malfunctioning of national wholesale roaming markets** in the EU. Larger mobile players and those benefitting from greater inbound roaming revenues indicate that a certain degree of competition is observable in the market, as testified by the fact that real wholesale market prices are often below the regulated (i.e. capped) wholesale prices foreseen in the current version of the regulation. Conversely, smaller players and especially MVNOs, and MNOs with large outbound traffic reported being offered prices close to the regulatory caps and, in any event, above costs. The same division is observable in the answers on the expected effect of RLAH on competition in wholesale markets: larger operators expect greater competition; MVNOs and smaller players hold the opposite view. This divergence of opinions is also reflected in the remedies/solutions supported by the various operators to make RLAH sustainable, with smaller players pointing to a significant reduction in wholesale caps as a means to make the system sustainable, while larger operators appear to find current caps acceptable. A similar division is observable in the answers provided by the few NRAs who responded to the consultation: countries with high levels of inbound roaming traffic support the current caps, whereas those with higher outbound traffic advocate for lower caps.⁵⁰ On the other hand, the majority of respondents support the use of an EU-wide system of caps rather than separate national solutions.

On the issue of **fair use policy**,⁵¹ its intended objectives, the definition of 'periodic travel', the link between fair use while roaming and domestic tariff plans (e.g. allowing consumers to be able to replicate their

⁴⁵ Note that this group may include entities other than individuals if these are not registered on the [EU Transparency Register](#); on this topic see also the [public consultation on a proposal for a mandatory transparency register](#).

⁴⁶ The various contributions from individuals, consumer associations, and anonymous respondents are available [here](#).

⁴⁷ The responses submitted by NRAs are available [here](#). On this point, see also BEREC's Report from 2014 (Section 2 above).

⁴⁸ All responses from businesses, including mobile operators and MVNOs, are available [here](#).

⁴⁹ It is worth recalling that a wholesale roaming charge 'represents the main cost of providing retail roaming services for the home operator, at least when it has a net negative wholesale balance, i.e. when the traffic of its customers roaming on foreign networks is greater than the traffic it receives from foreign customers roaming on its own domestic network'. Consultation document, p. 4.

⁵⁰ It appears that consumer representatives did not always comment on the state of wholesale markets; however those who did seem to be in favour of lower caps.

⁵¹ For further details, see pp. 14–15 of the consultation and questions 43 to 54.

domestic consumption patterns abroad as opposed to solutions that foresee some limitations on traffic volumes while abroad) and other aspects of fair use, individual consumers who responded to the consultation supported a generous interpretation of fair use. They stressed in particular that fair use should be interpreted in a way that responds to different types of roaming needs such as inadvertent roaming; the case of cross-border workers; differences in roaming between professional and leisure travellers. For mobile operators, fair use and in particular RLAH should apply to occasional travellers (essentially tourists), while professional roaming should be catered for through separate offers/plans.

Finally, respondents broadly called for a 'not overly complex' **sustainability mechanism** for cases when an operator's domestic price model is threatened by RLAH. More precise answers on this point can be found in the individual contributions of the various stakeholders that are publicly available on the Commission's website.

5. Positions of European Economic and Social Committee (EESC) and of the Committee of the Regions (CoR)

In its [information report](#) of 29 November 2013 the EESC expressed its adamant opinion that all roaming charges should be abolished for voice calls, text messages and data transmission. Nevertheless, it underlined the following key points that the Commission should consider in order to achieve an internal market for electronic communications:

- The charges applied for transit mobile communications within the EU should also be reviewed.
- The date of the abolition of all roaming charges should depend on the results of the structural reforms from Regulation 531/2012 to allow them to be fully implemented and to give NRAs the chance to take preventative measures against mobile operators who might increase domestic or bundle prices to make up for the loss of revenue.
- For transparency reasons, NRAs should cooperate with consumer organisations to create a standard format to enhance the visibility of the various roaming services that customers can choose from.
- The Commission should ensure partnerships between operators do not become oligopolies.⁵²

During the EESC's [public hearing](#) of 23 October 2013 on the EU mobile roaming system, in connection with the Connected Continent proposal, mobile operators expressed the need for more stability, an assessment of the outcome of the gradual phase-out of roaming charges and support for niche operators who may find it harder to compete with larger operator alliances. In terms of civil society representatives, consumers questioned the objectivity of the Commission's assessments and claimed the proposal was not transparent enough: the parallel decoupling of data roaming and abolition of voice roaming has caused confusion. Workers' representatives stated the proposed measures could lead to job losses, as was the case when telecom markets were liberalised.

In its [opinion](#) of January 2014 the Committee of the Regions welcomed the regulation of roaming calls and the ban on charges for incoming calls while roaming. However, it questioned the risk of an increase in domestic prices and bilateral and multilateral roaming agreements that might hinder competition. Furthermore, fair use guidelines should allow customers to feel confident using their normal domestic usage patterns when roaming.

⁵² See also EESC's [report](#) on Competition Policy 2012.

6. Conclusions

The Roaming Regulation has contributed to ongoing efforts to achieve a Connected Continent and a well-functioning EU Digital Single Market. Through various amendments to the initial 2007 Roaming Regulation, the Commission and co-legislators have gradually reduced surcharges for making and receiving voice calls, sending and receiving SMS messages and using data on a mobile phone while in another EU Member State. European Commission estimates indicate that total savings for EU consumers between 2009 and 2013 amounted to €9.6 billion. On 30 April 2016, the latest reduction in charges became applicable throughout the EU. The next step in the process is the planned abolition of all retail roaming surcharges as of 15 June 2017. Yet, to achieve this goal several questions remain open, in particular as regards the status of wholesale roaming markets.

Indeed, despite amendments to the Roaming Regulation, the current state of the EU telecoms market is fragmented and several adjustments are needed before a roaming-free policy can be fully implemented. While the abolition of retail surcharges up to a fair use limit would allow customers to replicate their domestic mobile usage patterns across the EU, the appropriate level of wholesale roaming caps needs to be found and possible mitigating measures adopted for mobile operators inter alia to recover costs. As the recent public consultation on national wholesale roaming markets has shown, finding a balanced solution remains complex. Customers from home and visited markets, mobile operators, NRAs and stakeholders have various conflicting interests. In particular, divisions exist between small and large operators, and between Member States depending on whether they have higher inbound than outbound roaming traffic. Last but not least is the need to reconcile the protection of consumer interests with operators' abilities to remain competitive and sustainable.

7. Other sources of reference

BEREC, [Guidelines on Regulation \(EU\) No. 531/2012 as amended by Regulation \(EU\) No. 2120/2015](#) (excluding Articles 3, 4 and 5 on wholesale access and separate sale of services), February 2016.

BEREC, [International Roaming BEREC Benchmark Data Report April – September 2015](#), March 2016.

EPRS, [The added value of EU policy on mobile telephone roaming charges](#), July 2014.

European Parliament, DG Internal Policies of the Union, [A Digital Agenda for Europe](#), EP Fact Sheet, March 2016.

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