

# Provisional agreement of 30 June 2015– subject to formal approval of the European Parliament and the Council

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

laying down measures concerning open internet and amending Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

[...]

HAVE ADOPTED THIS REGULATION:

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## Article 1 – Objective and scope

1. This Regulation establishes common rules to safeguard equal and non-discriminatory treatment of traffic in the provision of internet access services and safeguarding related end-user's rights.
2. This Regulation sets up a new retail pricing mechanism for Union-wide regulated roaming services in order to abolish retail roaming surcharges without distorting domestic and visited markets.

## Article 2 – Definitions

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

The following definitions shall also apply:

- (1) “provider of electronic communications to the public” means an undertaking providing public electronic communications networks or publicly available electronic communications services;
- (2) “internet access service” means a publicly available electronic communications service that provides access to the internet, and thereby connectivity to virtually all end points of the internet, irrespective of the network technology and terminal equipment used.

## Article 3 – Safeguarding of open internet access

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

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This paragraph is without prejudice to Union law or national law, in compliance with Union law, related to the lawfulness of the content, application or services.

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

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

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

Providers of internet access services shall not engage in traffic management measures going beyond the measures set out in subparagraph 2, and in particular shall not block, slow down, alter, restrict, interfere with, degrade or discriminate between specific content, applications or services, or specific categories thereof, except as necessary, and only for as long as necessary, to:

a) comply with Union legislation or national legislation, in compliance with Union law, to which the internet access service provider is subject, or with measures giving effect to such Union or national legislation, in compliance with Union law, including with orders by courts or public authorities vested with relevant powers;

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

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

4. Any traffic management measures may only entail processing of personal data that is necessary and proportionate to achieve the objectives of paragraph 3. Such processing shall be carried out in accordance with Directive 95/46. Traffic management measures shall also comply with Directive 2002/58.

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

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

### Article 4 – Supervision, enforcement and transparency measures for ensuring open internet access

1. National regulatory authorities shall closely monitor and ensure compliance with Article 3 and with paragraphs 3 to 6 of this Article, and shall promote the continued availability of non-discriminatory internet access at levels of quality that reflect advances in technology. For those purposes national regulatory authorities may impose technical characteristics minimum quality of service requirements and other appropriate and necessary measures on one or more providers of electronic communications to the public, including providers of internet access services. National regulatory authorities shall publish reports on an annual basis regarding their monitoring and findings, and provide those reports to the Commission and BEREC.

2. Providers of electronic communication services to the public, including providers of internet access services, shall make available, at the request of the national regulatory authority, information relevant to the obligations set out in Article 3 and paragraphs 3 to 6 of this Article, in particular information about how their network traffic and capacity are managed, as well as justifications for

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any traffic management measures applied. Those providers shall provide the requested information in accordance with the time limits and the level of detail required by the national regulatory authority.

3. Providers of internet access services shall ensure that a contract which includes an internet access service shall specify at least the following information:

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

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

(c) a clear and comprehensible explanation as to how any services within the meaning of Article 3(5), to which the end-user subscribes might in practice have an impact on the same end-user's internet access services;

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

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

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

3a. The information requirements laid down in paragraphs 3 and 4 are in addition to those contained in Directive 2002/22/EC as amended and shall not prevent Member States from maintaining or introducing additional monitoring, information and transparency requirements, including on the

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content, form and manner of the information to be published. Those requirements shall comply with this Regulation and the relevant provisions of Directive 2002/21/EC and Directive 2002/22/EC.

3b. Any significant discrepancy, continuous or regularly recurring, between the actual performance regarding speed or other quality of service parameters and the performance indicated by the provider of electronic communications to the public in accordance with paragraph 4 of this Article, where the relevant facts are established by a monitoring mechanism certified by the national regulatory authority, shall be deemed to constitute non-conformity of performance for the purposes of determining the remedies available to the consumer in accordance with national law.

This paragraph shall apply only to contracts concluded or renewed after the date of entry into force of this Regulation.

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

5. No later than nine months after this Regulation enters into force, in order to contribute to the consistent application of this Regulation, BEREC shall, after consulting stakeholders and in close cooperation with the Commission, lay down guidelines for the implementation of the obligations of national regulatory authorities under this Article.

6. This Article is without prejudice to tasks assigned to the same or other competent authorities by Member States in compliance with EU law.

### Article 5 – Penalties

Member States shall lay down the rules on penalties applicable to infringements of the provisions in Articles 3 and 4 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 by 30 April 2016 at the latest and shall notify it without delay of any subsequent amendment affecting them.

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## Article 6 – Amendments to Regulation (EU) No 531/2012

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

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

- a. points (i), (l) and (n) are deleted;
- b. the following points are added:
  - (r) “domestic retail price” means roaming provider’s retail per unit domestic charge applicable to calls made and SMS sent (both originated and terminated on different public communications networks within the same Member State), and to data consumed by a customer. In case there is no specific domestic retail price per unit, the domestic retail price shall be deemed to be the same charging mechanism as if the customer would be consuming the domestic tariff in his Member State;
  - (s) “separate sale of regulated retail data roaming services” means the provision of regulated data roaming services provided to roaming customers directly on a visited network by an alternative roaming provider.

(1a) In Article 3, paragraph 6 is replaced by the following:

6. The reference offer referred to in paragraph 5 shall be sufficiently detailed and shall include all components necessary for wholesale roaming access as referred to in paragraph 3, providing a description of the offerings relevant for direct wholesale roaming access and wholesale roaming resale access, and the associated terms and conditions. The reference offer referred to in paragraph 5 may include conditions to prevent permanent roaming or anomalous or abusive use of wholesale roaming access for purposes other than provision of regulated roaming services to roaming providers' end-users while the latter are periodically travelling within the Union. If necessary, national regulatory authorities shall impose changes to reference offers to give effect to obligations laid down in this Article.

(2) Article 4 is amended as follows:

- (a) the title of Article 4 is replaced by the following:

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Separate sale of regulated retail data roaming services.

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

(c) paragraphs 4 and 5 are deleted.

(3) Article 5 is amended as follows:

(a) the title of Article 5 is replaced by the following:

Implementation of separate sale of regulated retail data roaming services.

(b) paragraph 1 is replaced by the following:

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

(c) paragraph 2 is replaced by the following:

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

(d) in paragraph 3, the introduction is amended as follows:

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

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

(5) Articles 6a, 6b, 6b bis and 6b ter are inserted:

### Article 6a

#### Abolition of retail roaming surcharges

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

### Article 6b

#### Fair usage

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

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

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

### Article 6b bis

#### Sustainability of the abolition of retail roaming surcharges

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

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

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

Unless the application is manifestly unfounded, the national regulatory authority shall authorise the surcharge within one month of receipt of a notification by a roaming provider. Where the national regulatory authority considers that the application is manifestly unfounded, or considers that insufficient information has been provided, it shall take a final decision within a further two months, after having given the roaming provider the opportunity to be heard, authorising, amending or refusing the surcharge.

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

1. In order to ensure consistent application of the provisions set out in Articles 6b and 6b bis, the Commission shall, after having consulted BEREC, by means of implementing acts, adopt, by 15 December 2016, detailed rules on the application of fair use policy, and on the methodology for assessing the sustainability of the abolition of retail roaming surcharges and the notification to be submitted by a roaming provider for the purposes of that assessment. .

2. For the purposes of adopting detailed rules on the application of fair use policy and subject to Article 6b, the Commission shall take into account the following:

- (i) the evolution of pricing and consumption patterns in the Member States;
- (ii) the degree of convergence of domestic price levels across the Union;
- (iii) the travelling patterns in the Union;
- (iv) any observable risks of distortion of competition and investment incentives in home and visited markets.

3. Subject to Article 6b bis, the detailed rules on the methodology of assessing the sustainability of the abolition of retail roaming surcharges for a roaming provider shall be based on the following:

- (i) the determination of overall actual and projected costs of providing regulated retail roaming services by reference to the effective wholesale roaming rates for unbalanced traffic and a reasonable share of joint and common costs necessary to provide regulated retail roaming services;
- (ii) the determination of overall actual and projected revenues from the provision of regulated retail roaming services;
- (iii) the consumption of regulated retail roaming services and domestic consumption by the roaming provider's end users;
- (iv) the level of competition, prices and revenues in the domestic market, and any observable risk that roaming at domestic retail prices would appreciably affect the evolution of such prices.

4. The implementing acts referred to in the paragraph 1 shall be adopted in accordance with the examination procedure referred to in Article 6(2). The Commission shall periodically

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review those implementing acts in the light of market developments in accordance with the same procedure.

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

(6) Article 6c is inserted:

### Article 6c

#### Provision of regulated retail roaming services

1. Without prejudice to the second subparagraph, where a roaming provider applies a surcharge for the consumption of regulated roaming services in excess of the fair use policy, it shall meet the following requirements:

- (a) any surcharge applied for regulated roaming calls made, regulated roaming SMS messages sent and regulated data roaming services shall not exceed the maximum wholesale charges provided for in Articles 7(2), 9(1) and 12(1), respectively;
- (b) the sum of the domestic retail price and any surcharge applied for regulated roaming calls made, regulated roaming SMS messages sent or regulated data roaming services shall not exceed EUR 0,19 per minute, EUR 0,06 per SMS message and EUR 0,20 per megabyte used, respectively;
- (c) any surcharge applied for regulated roaming calls received shall not exceed the weighted average of maximum mobile termination rates across the Union set out in accordance with paragraph 2.

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

Roaming providers shall charge roaming calls made and received on a per second basis.

Roaming providers may apply an initial minimum charging period not exceeding 30 seconds to calls made. Roaming providers shall charge its customers for the provision of regulated data roaming services on a per-kilobyte basis, except for Multimedia Messaging Service (MMS) messages which may be charged on a per-unit basis.

This paragraph shall not preclude offers which provide roaming customers, for a per diem or any other fixed periodic charge, a certain volume allowance consistent with ordinary domestic usage and typical travel periods provided that the amount of the consumption of the full amount of the volume included in the offer leads to a unit price per regulated roaming calls made, calls received, SMS messages sent and data roaming services which does not exceed the respective domestic retail price and the maximum surcharge as set out in the first subparagraph.

2. By 31 December 2015, the Commission shall after having consulted BEREC and subject to the second subparagraph of this paragraph, adopt implementing acts setting out the weighted average of maximum mobile termination rates referred to in point (b) of paragraph 1.

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

(i) the maximum level of mobile termination rates imposed in the market for wholesale voice call termination on individual mobile networks by the national regulatory authorities in accordance with Articles 7 and 16 of the Framework Directive and Article 13 of Directive 2002/19/EC, and

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

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 6(2), and shall be reviewed every year in accordance with the same procedure.

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

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service than they would have been accorded in the absence of such a choice. The roaming provider shall remind those roaming customers of the nature of the roaming advantages which would thereby be lost.

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

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

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

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

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

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

(7) Article 6d is inserted:

Article 6d

Transitional retail roaming charges

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1. From 30 April 2016 until 14 June 2017, roaming providers may apply a surcharge in addition to domestic retail price for the provision of regulated retail roaming services.
2. During the period referred to in paragraph 1, Article 6c shall apply mutatis mutandis. .

(8) In Article 14, paragraphs 1 and 3 are replaced as follows:

1. To alert roaming customers to the fact that they may be subject to roaming charges when making or receiving a call or when sending an SMS message, each roaming provider shall, except when the customer has notified the roaming 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 domestic provider, 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.

That basic personalised information shall include information as of the date of application of Article 6a, on fair use policy the roaming customer is subject to within the EU. That basic personalised information shall also include information on the charges to which the customer may be subject under his tariff scheme , and as of the date of application of Article 6a, on the charges which apply in excess of the fair use policy within the EU (in the currency of the home bill provided by the customer's domestic provider) to which the customer may be subject under his tariff scheme for:

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

[Subparagraphs 3-5 unchanged]

The first, second, fourth and fifth subparagraphs, with exception of the reference to the fair use policy therein, shall also apply to voice and SMS roaming services used by roaming customers travelling outside the Union and provided by a roaming provider.

2a. As of the date set out in Article 6a, the roaming provider shall send a notification to the roaming customer when the applicable fair use volume of regulated roaming consumption is

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reached. That notification shall indicate the regulated roaming surcharge that will be applied to any additional consumption of regulated voice and SMS roaming services by the roaming customer. Each customer shall have the right to require the roaming provider to stop sending such notifications and shall have the right, at any time and free of charge, to require the provider to provide the service again.

3. Roaming providers shall provide all customers with full information on applicable roaming charges, when subscriptions are taken out. They shall also provide their roaming customers with updates on applicable roaming charges without undue delay each time there is a change in these charges.

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

(9) In Article 15, paragraphs 2 and 6 are replaced as follows:

2. An automatic message from the roaming provider shall inform the roaming customer that the latter is using regulated data roaming services, and as of the date of application of Article 6a, provide basic personalised information on the fair use policy the roaming customer is subject to within the EU. That information shall also include information on the charges the roaming customer is subject to within the EU, and as of the date of application of Article 6a, on the charges which apply in excess of the fair use policy (in the currency of the home bill provided by the customer's domestic provider), expressed in price per megabyte, applicable to the provision of regulated data roaming services to that roaming customer in the Member State concerned, except where the customer has notified the roaming provider that he does not require that information.

The information shall be delivered to the roaming customer's mobile device, for example by an SMS message, an e-mail or a pop-up window on the mobile device, every time the roaming customer enters a Member State other than that of his domestic provider and initiates for the first time a data roaming service in that particular Member State. It shall be provided free of charge at the moment the roaming customer initiates a regulated data roaming service, by an appropriate means adapted to facilitate its receipt and easy comprehension.

[Subparagraph 3 unchanged]

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

[Subparagraphs 2 and 3 unchanged]

(9a) In Article 15, paragraph 2a is added:

2a. As of the date of application of Article 6a, the roaming provider shall send a notification when the applicable fair use volume of regulated data roaming consumption is reached. That notification shall indicate the regulated roaming surcharge that will be applied to any additional consumption of regulated data roaming services by the roaming customer. Each customer shall have the right to require the roaming provider to stop sending such notifications and shall have the right, at any time and free of charge, to require the provider to provide the service again.

(9b) In Article 15, paragraph 3 is replaced by:

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

(10) Article 16 is amended as follows:

a) in the first paragraph, the following subparagraph is added:

National regulatory authorities shall strictly monitor and supervise roaming providers availing of Article 6b, 6b bis and 6c(3).

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b) paragraph 2 is replaced by the following:

National regulatory authorities shall make up-to-date information on the application of this Regulation, in particular Articles 6a, 6b, 6b bis, 6c, 7, 9, and 12 publicly available in a manner that enables interested parties to have easy access to it.

(11) Article 19 is replaced by the following:

1. Upon entry into force of this Regulation, the Commission shall initiate a review of the wholesale roaming market with a view to assessing measures necessary to enable abolition of retail roaming surcharges by 15 June 2017. The Commission shall review, inter alia, the degree of competition in national wholesale markets, and in particular assess the level of wholesale costs incurred and wholesale charges applied, and the competitive situation of operators with limited geographic scope, including the effects of commercial agreements on competition as well as the ability of operators to take advantage of economies of scale. The Commission shall also assess the competition developments in the retail roaming markets and any observable risks of distortion of competition and investment incentives in home and visited markets. In assessing measures necessary to enable abolition of retail roaming surcharges, the Commission shall take into account the need to ensure that roaming providers are able to recover all costs of providing regulated wholesale roaming services, including joint and common costs. The Commission shall also take into account the need to prevent permanent roaming or anomalous or abusive use of wholesale roaming access for purposes other than the provision of regulated roaming services to roaming providers' end-users while the latter are periodically travelling within the Union.

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

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

3. In addition, the Commission shall submit a report to the European Parliament and the Council every two years after the report referred to in paragraph 2. Each report shall include, inter alia, an assessment of:

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(a) the availability and quality of services, including those which are an alternative to regulated retail voice, SMS and data roaming services, in particular in the light of technological developments;

(b) the degree of competition in both the retail and wholesale roaming markets, in particular the competitive situation of small, independent or newly started operators, including the competition effects of commercial agreements and the degree of interconnection between operators;

(c) the extent to which the implementation of the structural measures provided for in Articles 3 and 4 has produced results in developing competition in the internal market for regulated roaming services.

4. In order to assess the competitive developments in the Union-wide roaming markets, BEREC shall regularly collect data from national regulatory authorities on the development of retail and wholesale charges for regulated voice, SMS and data roaming services. Those data shall be notified to the Commission at least twice a year. The Commission shall make them public.

On the basis of collected data, BEREC shall also report regularly on the evolution of pricing and consumption patterns in the Member States both for domestic and roaming services and the evolution of actual wholesale roaming rates for unbalanced traffic between roaming providers.

BEREC shall also annually collect information from national regulatory authorities on transparency and comparability of different tariffs offered by operators to their customers. The Commission shall make those data and findings public.

### Article 7 – Review clause

The Commission shall review Articles 3, 4 and 5 of this Regulation and report to the European Parliament and the Council. The first report shall be submitted no later than 30 April 2019. Subsequent reports shall be submitted every four years thereafter. The Commission shall, if necessary, submit appropriate proposals with a view to amending this Regulation.

### Article 8 – Entry into force

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

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

(a) Article 6(5), (9a) which shall apply from 15 June 2017 provided that the legislative act referred to in Article 6(11) is applicable on this date.

In case that legislative act is not applicable on 15 June 2017, Article 6(7) shall apply instead of Article 6(5) until that legislative act is applicable.

In case that legislative act is applicable after 15 June 2017, Article 6(5), (9a) shall apply from the date of application of that legislative act;

(b) conferral of implementing powers on the Commission foreseen in Article 6(3), (5) and (6), which shall apply from the date of entry into force of this Regulation;

(c) task of BEREC foreseen in Article 4(5), which shall apply from the entry into force of this Regulation;

(d) Article 6(11) which shall apply from the entry into force of this Regulation.

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

3. The provisions of Commission Implementing Regulation (EU) No 1203/2012 of 14 December 2012 on the separate sale of regulated retail roaming services within the Union<sup>3</sup> related to the technical modality for the implementation of accessing local data roaming services on a visited network shall continue to apply for the purposes of separate sale of retail regulated data roaming services until the adoption of the implementing act referred to in point (c) of Article 6(3) of this Regulation.

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**Provisional agreement of 30 June 2015– subject to formal approval of the European Parliament and the Council**

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

Done at Brussels,

For the European Parliament  
The President

For the Council  
The President