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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

(recast)

(Text with EEA relevance)

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(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,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile communications networks within the Community has been substantially amended. Since further amendments are to be made, it should be recast in the interests of clarity.

(2) The objective of reducing the difference between national and roaming tariffs, which was included in the Commission's Benchmarking Framework 2011-2015, endorsed by the i2010 High Level Group in November 2009, and included in the Commission Communication entitled 'A Digital Agenda for Europe', should also remain the goal of this Regulation. The envisaged separate sale of roaming services and domestic services should increase competition and therefore lower the prices for customers and create an internal market for roaming services in the Union with no significant differentiation between national and roaming tariffs. Union-wide roaming services can stimulate the development of an internal telecommunications market in the Union.

(3) An internal telecommunications market cannot be said to exist while there are significant differences between domestic and roaming prices. Therefore the ultimate aim should be to eliminate the difference between domestic charges and roaming charges, thus establishing an internal market for mobile communication services.

(4) The high level of voice, SMS and data roaming prices payable by users of public mobile communication networks, such as students, business travellers and tourists, acts as an obstacle to using their mobile devices when travelling abroad within the Union and is a matter of concern for consumers, national regulatory authorities, and the Union institutions, constituting a significant barrier to the internal market. The excessive retail charges are resulting from high wholesale charges levied by the foreign host network operator and also, in many cases, from high retail mark-ups charged by the customer's own network operator. Due to a lack of competition, reductions in wholesale charges are often not passed on to the retail customer. Although some operators have recently introduced tariff schemes that offer customers more favourable conditions and somewhat lower prices, there is still evidence that the relationship between costs and prices is far from what would prevail in competitive markets.

(5) High roaming charges constitute an impediment to the Union's efforts to develop into a knowledge-based economy and to the realisation of an internal market of 500 million consumers. Mobile data traffic is facilitated by allocating sufficient radio spectrum in order for consumers and businesses to use voice, SMS and data services anywhere in the Union. By providing for the allocation of sufficient and appropriate spectrum in a timely manner to support Union policy objectives and to best meet the increasing demands for wireless data traffic, the multiannual radio spectrum policy programme established by Decision No 243/2012/EU of the European Parliament and of the Council will pave the way for a development that will allow the Union to take the global lead on broadband speeds, mobility, coverage and capacity, facilitating the emergence of new business models and technologies, thereby contributing to reducing the structural problems at roaming wholesale level.

(6) The widespread use of internet-enabled mobile devices means that data roaming is of great economic significance. This is a decisive criterion for both users and providers of applications and content. In order to stimulate the development of this market, charges for data transport should not impede growth.

(7) The Commission noted in its Communication entitled 'On the interim report on the state of development of roaming services within the European Union' that technological developments and/or the alternatives to roaming services, such as availability of Voice over Internet Protocol (VoIP) or Wi-Fi, may render the internal market for roaming services in the Union more competitive. While these alternatives, in particular VoIP services, are increasingly being used at the domestic level, there have been no significant developments in their use when roaming.

(8) Given the rapid development of mobile data traffic and the increasing amount of customers using voice, SMS and data roaming services abroad, there is a need to increase the competitive pressure, to develop new business models and technologies. The regulation of roaming charges should be designed in a way that does not discourage competition towards lower price levels.

(9) The creation of a European social, educational, cultural and entrepreneurial area based on the mobility of individuals and digital data should facilitate communication between people in order to build a real 'Europe for Citizens'.

(10) Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive), Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (hereinafter together referred to as 'the 2002 regulatory framework for electronic communications') aim to create an internal market for electronic communications within the Union while ensuring a high level of consumer protection through enhanced competition.

(11) Regulation (EC) No 717/2007 is not an isolated measure, but complements and supports, insofar as Union-wide roaming is concerned, the rules provided for by the 2002 regulatory framework for electronic communications. That framework has not provided national regulatory authorities with sufficient tools to take effective and decisive action with regard to the pricing of roaming services within the Union and thus fails to ensure the smooth functioning of the internal market for roaming services. Regulation (EC) No 717/2007 was an appropriate means of correcting this situation.

(12) The 2002 regulatory framework for electronic communications draws on the principle that *ex-ante* regulatory obligations should only be imposed where there is not effective competition, providing for a process of periodic market analysis and review of obligations by national regulatory authorities, leading to the imposition of *ex-ante* obligations on operators designated as having significant market power. The elements constituting this process include the definition of relevant markets in accordance with the Commission's Recommendation on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC (hereinafter referred to as 'the Recommendation'), the analysis of the defined markets in accordance with the Commission's guidelines on market analysis and the assessment of significant market power under the Union regulatory framework for electronic communications networks and services, the designation of operators with significant market power and the imposition of *ex-ante* obligations on operators so designated.

(13) The Recommendation identified as a relevant market susceptible to *ex-ante* regulation the wholesale national market for international roaming on public mobile networks. However, the work undertaken by the national regulatory authorities, both individually and within the European Regulators Group (ERG) and its successor the Body of European Regulators for Electronic Communications (BEREC) established by Regulation (EC) No 1211/2009 of the European Parliament and of the Council, in analysing the wholesale national markets for international roaming has demonstrated that it has not yet been possible for a national regulatory authority to address effectively the high level of wholesale Union-wide roaming charges because of the difficulty in identifying undertakings with significant market power in view of the specific circumstances of international roaming, including its cross-border nature. Following the entry into force of Regulation (EC) No 717/2007, the roaming market was withdrawn from the revised Recommendation.

(14) In addition, the national regulatory authorities responsible for safeguarding and promoting the interests of mobile customers normally resident within their territory are not able to control the behaviour of the

visited network operators, situated in other Member States, on whom those customers depend when using international roaming services. This obstacle could also diminish the effectiveness of measures taken by Member States based on their residual competence to adopt consumer protection rules.

(15) Accordingly, there is pressure for Member States to take measures to address the level of international roaming charges, but the mechanism for *ex-ante* regulatory intervention by national regulatory authorities provided by the 2002 regulatory framework for electronic communications has not proved sufficient to enable those authorities to act decisively in the consumers' interest in this specific area.

(16) Furthermore, the European Parliament resolution on European electronic communications regulation and markets called on the Commission to develop new initiatives to reduce the high costs of cross-border mobile telephone traffic, while the European Council of 23 March 2006 and 24 March 2006 concluded that focused, effective and integrated information and communication technology (ICT) policies both at Union and national level are essential to achieving the goals of economic growth and productivity and noted in this context the importance for competitiveness of reducing roaming charges.

(17) The 2002 regulatory framework for electronic communications, on the basis of considerations apparent at that time, was aimed at removing all barriers to trade between Member States in the area that it harmonised, inter alia, measures which affect roaming charges. However, this should not prevent the adaptation of harmonised rules in step with other considerations in order to find the most effective means of enhancing competition in the internal market for roaming services and achieving a high level of consumer protection.

(18) This Regulation should therefore allow for a departure from the rules otherwise applicable under the 2002 regulatory framework for electronic communications, in particular the Framework Directive, namely that prices for service offerings should be determined by commercial agreement in the absence of significant market power, and to thereby accommodate the introduction of complementary regulatory obligations which reflect the specific characteristics of Union-wide roaming services.

(19) The retail and wholesale roaming markets exhibit unique characteristics which justify exceptional measures which go beyond the mechanisms otherwise available under the 2002 regulatory framework for electronic communications.

(20) A common, harmonised approach should be employed for ensuring that users of terrestrial public mobile communication networks when travelling within the Union do not pay excessive prices for Union-wide roaming services, thereby enhancing competition concerning roaming services between roaming providers, achieving a high level of consumer protection and preserving both incentives for innovation and consumer choice. In view of the cross-border nature of the services concerned, this common approach is needed so that roaming providers can operate within a single coherent regulatory framework based on objectively established criteria.

(21) Regulation (EC) No 717/2007 is to expire on 30 June 2012. Prior to its expiry, the Commission has carried out a review in accordance with Article 11 thereof, where it was required to evaluate whether the objectives of that Regulation had been achieved and to review developments in wholesale and retail charges for the provision to roaming customers of voice, SMS and data communications services. In its report to the European Parliament and the Council of 6 July 2011 on the outcome of the review of the functioning of Regulation (EC) No 717/2007, the Commission concluded that it was appropriate to extend the applicability of Regulation (EC) No 717/2007 beyond 30 June 2012.

(22) Data on the development of prices for Union-wide voice, SMS and data roaming services since the entry into force of Regulation (EC) No 717/2007, including in particular those collected on a quarterly basis by national regulatory authorities and reported through the medium of the BEREC, do not provide evidence to suggest that competition at the retail or wholesale levels has reasonably developed and is likely to be sustainable from June 2012 onwards in the absence of regulatory measures. Such data indicates that retail and wholesale roaming prices are still much higher than domestic prices and continue to cluster at or close to the limits set by Regulation (EC) No 717/2007, with only limited competition below those limits.

(23) The expiry on 30 June 2012 of the regulatory safeguards which apply to Union-wide roaming services at wholesale and retail levels by virtue of Regulation (EC) No 717/2007 would therefore give rise to a significant risk that the underlying lack of competitive pressures in the internal market for roaming services and the incentive for roaming providers to maximise their roaming revenues would result in retail and wholesale prices for Union-wide roaming that do not constitute a reasonable reflection of the underlying costs involved in the provision of the service, thereby jeopardising the objectives of that Regulation. Regulatory intervention in the market for mobile roaming services should therefore be extended beyond 30 June 2012 in order to ensure the smooth functioning of the internal market by

allowing competition to develop, while at the same time guaranteeing that consumers continue to benefit from the assurance that they will not be charged an excessive price, in comparison with competitive national prices.

(24) The policy objective laid down in Article 8 of the Framework Directive concerning end users' ability to access and distribute information or run applications and services of their choice should be promoted by national regulatory authorities.

(25) In order to allow for the development of a more efficient, integrated and competitive market for roaming services, there should be no restrictions that prevent undertakings from effectively negotiating wholesale access for the purpose of providing roaming services. Obstacles to access to such wholesale roaming services, due to differences in negotiating power and in the degree of infrastructure ownership of undertakings should be removed. Mobile virtual network operators (MVNOs) and resellers of mobile communication services without their own network infrastructure typically provide roaming services based on commercial wholesale roaming agreements with their host mobile network operators in the same Member State. Commercial negotiations, however, may not leave enough margin to MVNOs and resellers for stimulating competition through lower prices. The removal of those obstacles and balancing the negotiation power between MVNOs/resellers and mobile network operators by an access obligation and wholesale caps should facilitate the development of alternative, innovative and Union-wide roaming services and offers for customers. The rules of the 2002 regulatory framework for electronic communications, in particular of the Framework Directive and Access Directive, do not allow this problem to be addressed via the imposition of obligations on operators with significant market powers.

(26) Therefore rules should be introduced to lay down the obligation to meet reasonable requests for wholesale access to public mobile communications networks for the purpose of providing roaming services. Such access should be in line with the needs of those seeking access. Access should be refused only on the basis of objective criteria, such as technical feasibility and the need to maintain network integrity. Where access is refused, the aggrieved party should be able to submit the case for dispute resolution in accordance with the procedure set out in this Regulation. In order to ensure a level playing field, wholesale access for the purpose of providing roaming services should be granted in accordance with the regulatory obligations laid down in this Regulation applicable at the wholesale level and should take into account the different cost elements necessary for the provision of such access. A consistent regulatory approach to the wholesale access for the provision of roaming services should contribute to avoiding distortions between Member States. BEREC should, in coordination with the Commission and in collaboration with the relevant stakeholders, issue guidelines for wholesale access for the purpose of providing roaming services.

(27) A wholesale roaming access obligation should include the provision of direct wholesale roaming services as well as the provision of roaming services on a wholesale basis for resale by third parties. The wholesale roaming access obligation should also cover mobile network operator's obligation to enable MVNOs and resellers to purchase regulated wholesale roaming services from wholesale aggregators which provide a single point of access and a standardised platform to roaming agreements all over the Union. In order to ensure that operators provide access to all facilities necessary for direct wholesale roaming access and wholesale roaming resale access to roaming providers within a reasonable period of time, a reference offer should be published containing the standard conditions for direct wholesale roaming access and wholesale roaming resale access. The publication of the reference offer should not prevent commercial negotiations between access seeker and access provider on the price level of the final wholesale agreement or on additional wholesale access services that go beyond those necessary for direct wholesale roaming access and wholesale roaming resale access.

(28) A wholesale roaming access obligation should cover access to all the components necessary to enable the provision of roaming services, such as: network elements and associated facilities; relevant software systems including operational support systems; information systems or databases for pre-ordering, provisioning, ordering, maintaining and repair requests, and billing; number translation or systems offering equivalent functionality; mobile networks and virtual network services.

(29) If access seekers for wholesale roaming resale request access to facilities or services in addition to what is necessary for the provision of retail roaming services, mobile network operators may recover fair and reasonable charges for those facilities or services. Those additional facilities or services could, inter alia, be value-added services, additional software and information systems or billing arrangements.

(30) Mobile communications services are sold in bundles including both domestic and roaming services, which limits customer choice for roaming services. Such bundles reduce transparency concerning roaming services, since it is difficult to compare individual items within the bundles. Consequently,

competition among operators on the basis of the roaming element in the mobile bundle is not yet apparent. Facilitating the availability of roaming as a stand-alone service would address structural problems by raising consumer awareness of roaming prices, allowing distinct consumer choice concerning roaming services and thus increasing competitive pressure on the demand side. This will therefore contribute to the smooth functioning of the internal market for roaming services.

(31) Consumer and business demand for mobile data services has increased significantly in recent years. However, due to high data roaming charges, the use of those services is severely constrained for consumers and businesses operating across borders in the Union. Given the infancy of the market and the rapidly increasing consumer demand for data roaming, regulated retail charges might only keep prices around the proposed maximum charges themselves, as experienced in relation to Regulation (EC) No 717/2007, instead of pushing them down further, which therefore confirms the need for further structural measures.

(32) Customers should be able to switch easily, within the shortest possible time depending on the technical solution, without penalty and free of charge to an alternative roaming provider or between alternative roaming providers. Customers should be informed in a clear, understandable and easily accessible form about this possibility.

(33) Consumers should have the right to opt, in a consumer-friendly way, for the separate sale of roaming services from their domestic mobile package. There are currently several ways in which the separate sale of regulated retail roaming services could be technically implemented, including dual International Mobile Subscriber Identity (IMSI) (two separate IMSI on the same SIM card), single IMSI (the sharing of one IMSI between the domestic and roaming providers) and combinations of dual or single IMSI together with the technical modality that does not prevent the customer from accessing regulated data roaming services provided directly on a visited network, by means of arrangements between the home network operator and the visited network operator.

(34) High data roaming prices are deterring customers from using mobile data services when travelling in the Union. Given the increasing demand and importance of data roaming services, there should be no obstacles to using alternative data roaming services, provided directly on a visited network, temporarily or permanently, regardless of existing roaming contracts or arrangements with domestic providers and without any additional charge levied by them. When it is required, in order to offer data roaming services, provided directly on a visited network, domestic providers and providers of data roaming services should collaborate in order not to prevent customers from accessing and using those services and to ensure service continuity of other roaming services.

(35) While this Regulation should not lay down any particular technical modalities for the separate sale of roaming services, but instead pave the way for the most effective and efficient solution, including a combined solution, to be developed by the Commission based on input from BEREC, criteria should be laid down with regard to the technical characteristics which should be met by the technical solution for the separate sale of roaming services. Those criteria should include, inter alia, the introduction of the solution in a coordinated and harmonised manner across the Union and should ensure that consumers are able to quickly and easily choose a different provider for roaming services without changing their number. Furthermore, roaming outside the Union or by third-country customers inside the Union should not be impeded.

(36) Increased cooperation and coordination among mobile network operators should be established to technically enable a coordinated and sound technical evolution of the provision of separate roaming services, and not preventing access to data roaming services provided directly on a visited network. Therefore, the relevant basic principles and methodologies should be elaborated, in order to allow a rapid adaptation to changed circumstances and technological advancement. BEREC should, in collaboration with the relevant stakeholders, assist the Commission to develop technical elements in order to enable the separate sale of roaming services and in order not to prevent access to data roaming services provided directly on a visited network. If necessary, the Commission should give a mandate to a European standardisation body for the amendment of the relevant standards that are necessary for the harmonised implementation of the separate sale of regulated retail roaming services.

(37) In order to ensure uniform conditions for the implementation of the provisions of this Regulation, implementing powers should be conferred on the Commission in respect of detailed rules on information obligations of domestic providers and on a technical solution for the separate sale of roaming services. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers.

(38) BEREC should be allowed, taking into account this Regulation and the implementing acts adopted pursuant hereto, to provide on its own initiative specific technical guidance on the separate sale of regulated retail roaming services or on other matters covered by this Regulation.

(39) It is considered that, for the separate sale of regulated retail roaming services to be fully effective, such sale needs to be combined with the wholesale access obligation for the provision of roaming services to facilitate market entry by new or existing players including cross-border roaming services providers. That solution would avoid distortions between Member States by ensuring a consistent regulatory approach thereby contributing to the development of the internal market. However, the implementation of the separate sale of regulated retail roaming services will require a reasonable period for operators to adapt at the technical level, and therefore the structural measures will only result in a genuine internal market with sufficient competition after a certain period of time. For this reason, maximum wholesale charges for voice, SMS and data roaming services as well as safeguard caps for those services at the retail level should be maintained on a temporary basis at an appropriate level to ensure that the existing consumer benefits are preserved during a transitional period of implementation of such structural measures.

(40) With regard to the continuation of temporary price regulation, regulatory obligations should be imposed at both retail and wholesale levels to protect the interests of roaming customers, since experience has shown that reductions in wholesale prices for Union-wide roaming services may not be reflected in lower retail prices for roaming owing to the absence of incentives for this to happen. On the other hand, action to reduce the level of retail prices without addressing the level of the wholesale costs associated with the provision of these services could risk disrupting the orderly functioning of the internal market for roaming services and would not allow a higher degree of competition.

(41) Until the structural measures have brought sufficient competition in the internal market for roaming services which would lead to reductions in wholesale costs which in turn would be passed on to consumers, the most effective and proportionate approach to regulating the level of prices for making and receiving intra-Union roaming calls is the setting at Union level of a maximum average per-minute charge at wholesale level and the limiting of charges at retail level through the Eurotariff introduced by Regulation (EC) No 717/2007, which was extended by the euro-SMS tariff provided for in Regulation (EC) No 544/2009 of the European Parliament and of the Council and should be extended by the euro-data tariff provided for in this Regulation. The average wholesale charge should apply between any pair of operators within the Union over a specified period.

(42) The transitory euro-voice, euro-SMS and euro-data tariffs should be set at a safeguard level which, whilst ensuring that consumer benefits are not only preserved but even increased during a transitional period of implementing the structural measures, guarantees a sufficient margin to roaming providers and encourages competitive roaming offerings at lower rates. During the period concerned, roaming providers should actively bring to the attention of the customers information about the Eurotariffs and offer them to all their roaming customers, free of charge, and in a clear and transparent manner.

(43) The transitory euro-voice, euro-SMS and euro-data tariffs to be offered to roaming customers should reflect a reasonable margin over the wholesale cost of providing a roaming service, whilst allowing roaming providers the freedom to compete by differentiating their offerings and adapting their pricing structures to market conditions and consumer preferences. Such safeguard caps should be set at levels which do not distort the competitive benefits of structural measures and could be removed once the structural measures have had an opportunity to deliver concrete gains for customers. This regulatory approach should not apply to the part of the tariff that is charged for the provision of value-added services but only to the tariffs for the connection to such services.

(44) This regulatory approach should be simple to implement and monitor in order to minimise the administrative burden both for the operators and roaming providers which are affected by its requirements and for the national regulatory authorities charged with its supervision and enforcement. It should also be transparent and immediately understandable to all mobile customers within the Union. Furthermore it should provide certainty and predictability to operators providing wholesale and retail roaming services. The level in monetary terms of the maximum per-minute charges at wholesale and retail level should therefore be specified in this Regulation.

(45) The maximum average per-minute charge at wholesale level so specified should take account of the different elements involved in the making of a Union-wide roaming call, in particular the cost of originating and terminating calls over mobile networks and including overheads, signalling and transit. The most appropriate benchmark for call origination and for call termination is the average mobile termination rate for mobile network operators in the Union, based on information provided by the national regulatory authorities and published by the Commission. The maximum average per-minute

charge established by this Regulation should therefore be determined taking into account the average mobile termination rate, which offers a benchmark for the costs involved. The maximum average per-minute charge at wholesale level should decrease annually to take account of reductions in mobile termination rates imposed by national regulatory authorities from time to time.

(46) The transitory euro-voice tariff applicable at retail level should provide roaming customers with the assurance that they will not be charged an excessive price when making or receiving a regulated roaming call, whilst leaving the roaming provider sufficient margin to differentiate the products they offer to customers.

(47) During the transitional period of safeguard caps, all consumers should be informed about, and have the option of choosing without additional charges or preconditions, a simple roaming tariff which will not exceed maximum charges. A reasonable margin between wholesale costs and retail prices should ensure that roaming providers cover all their specific roaming costs at retail level including appropriate shares of marketing costs and handset subsidies and are left with an adequate residual to yield a reasonable return. Transitory euro-voice, euro-SMS and euro-data tariffs are an appropriate means to provide both the consumer with protection and the roaming provider with flexibility. In line with the wholesale level, the maximum levels of the euro-voice, euro-SMS and euro-data tariffs should decrease annually.

(48) During the transitional period of safeguard caps, new roaming customers should be fully informed in a clear and understandable manner of the range of tariffs that exist for roaming within the Union, including the tariffs which are compliant with the transitory euro-voice, euro-SMS and euro-data tariffs. Existing roaming customers should be given the opportunity to choose a new tariff compliant with the transitory euro-voice, euro-SMS and euro-data tariffs or any other roaming tariffs within a certain time frame. For existing roaming customers who have not made their choice within this time frame, it is appropriate to distinguish between those who had already opted for a specific roaming tariff or package before the entry into force of this Regulation and those who had not. The latter should be automatically accorded a tariff that complies with this Regulation. Roaming customers who already benefit from specific roaming tariffs or packages which suit their individual requirements and which they have chosen on that basis should remain on their previously selected tariff or package if, after having been reminded of their current tariff conditions and of the applicable Eurotariffs, they express the choice to their roaming provider to remain on that tariff. Such specific roaming tariffs or packages could include, for example, roaming flat-rates, non-public tariffs, tariffs with additional fixed roaming charges, tariffs with per-minute charges lower than the maximum euro-voice, euro-SMS and euro-data tariffs or tariffs with set-up charges.

(49) Since this Regulation should constitute a specific measure within the meaning of Article 1(5) of the Framework Directive, and since providers of Union-wide roaming services may be required by this Regulation to make changes to their retail roaming tariffs in order to comply with the requirements of this Regulation, such changes should not trigger for mobile customers any right under national laws transposing the 2002 regulatory framework for electronic communications to withdraw from their contracts.

(50) This Regulation should not prejudice innovative offers to consumers which are more advantageous than the transitory euro-voice, euro-SMS and euro-data tariffs as defined in this Regulation, but rather should encourage innovative offers to roaming customers at lower rates in particular in response to the additional competitive pressure created by the structural provisions of this Regulation. This Regulation does not require roaming charges to be reintroduced in cases where they have been abolished altogether, nor does it require existing roaming charges to be increased to the level of the transitory safeguard limits set out in this Regulation.

(51) Where maximum charges are not denominated in euro, the applicable initial limits and the revised values of those limits should be determined in the relevant currency by applying the reference exchange rates published in the *Official Journal of the European Union* on the date specified in this Regulation. Where there is no publication on the date specified, the applicable reference exchange rates should be those published in the first *Official Journal of the European Union* following that date and containing such reference exchange rates. To protect consumers against increasing retail prices for regulated roaming services (regulated voice, SMS or data roaming services) due to fluctuations in the reference exchange rate of currencies other than the euro, a Member State whose currency is not the euro should use an average of several reference exchange rates over time for determining the maximum retail charges in its currency.

(52) The practice by some mobile network operators of billing for the provision of wholesale roaming calls on the basis of minimum charging periods of up to 60 seconds, as opposed to the per-second basis normally applied for other wholesale interconnection charges, creates a distortion of competition

between those operators and those applying different billing methods, and undermines the consistent application of the maximum wholesale charges introduced by this Regulation. Moreover it represents an additional charge which, by increasing wholesale costs, has negative consequences for the pricing of voice roaming services at retail level. Mobile network operators should therefore be required to bill for the wholesale provision of regulated roaming calls on a per-second basis.

(53) The ERG, the predecessor of the BEREC, estimated that the practice of mobile operators of using charging intervals of more than one second when billing for roaming services at retail level has added 24 % to a typical euro-voice tariff bill for calls made and 19 % for calls received. They also stated that these increases represent a form of hidden charge since they are not transparent to most consumers. For this reason, the ERG recommended urgent action to address the different billing practices at retail level applied to the euro-voice tariff.

(54) While Regulation (EC) No 717/2007, by introducing a Eurotariff in the Union, established a common approach to ensuring that roaming customers are not charged excessive prices for regulated roaming calls, the different billing unitisation practices employed by mobile operators seriously undermines its consistent application. This also means that, despite the cross-border nature of Union-wide roaming services, there are divergent approaches in relation to the billing of regulated roaming calls which distort competitive conditions in the internal market.

(55) A common set of rules regarding unitisation of euro-voice tariff bills at retail level should therefore be introduced in order to further strengthen the internal market and provide throughout the Union the same high level of protection to consumers of Union-wide roaming services.

(56) Providers of regulated roaming calls at the retail level should therefore be required to bill their customers on a per-second basis for all calls subject to a euro-voice tariff subject only to the possibility to apply a minimum initial charging period of no more than 30 seconds for calls made. This will enable roaming providers to cover any reasonable set-up costs and to provide flexibility to compete by offering shorter minimum charging periods. No minimum initial charging period is justified in the case of euro-voice tariff calls received, as the underlying wholesale cost is charged on a per-second basis and any specific set-up costs are already covered by mobile termination rates.

(57) Customers should not have to pay for receiving voice mail messages in a visited network, as they cannot control the duration of such messages. This should be without prejudice to other applicable voice mail charges, for example charges for listening to such messages.

(58) Customers living in border regions should not receive unnecessarily high bills due to inadvertent roaming. Roaming providers should therefore take reasonable steps to protect customers against incurring roaming charges while they are located in their Member State. This should include adequate information measures in order to empower customers to actively prevent such instances of inadvertent roaming. National regulatory authorities should be alert to situations in which customers face problems with paying roaming charges while they are still located in their Member State and should take appropriate steps to mitigate the problem.

(59) With regard to SMS roaming services, as is the case for voice roaming calls, there is a significant risk that imposing wholesale pricing obligations alone would not result automatically in lower rates for retail customers. On the other hand, action to reduce the level of retail prices without addressing the level of the wholesale costs associated with the provision of these services could prejudice the position of some roaming providers, in particular smaller roaming providers, by increasing the risk of price squeeze.

(60) Furthermore, because of the particular structure of the market for roaming services and its cross-border nature, the 2002 regulatory framework for electronic communications has not provided national regulatory authorities with suitable tools to address effectively the competitive problems underlying the high level of wholesale and retail prices for regulated roaming SMS services. This fails to ensure the smooth functioning of the internal market and should be corrected.

(61) Regulatory obligations should therefore be imposed with regard to regulated roaming SMS services at wholesale level, in order to establish a more reasonable relationship between wholesale charges and the underlying costs of provision, and at retail level for a transitional period to protect the interests of roaming customers until the structural measures become effective.

(62) Until the structural measures have brought sufficient competition in the market for roaming services, the most effective and proportionate approach to regulating the level of prices for regulated roaming SMS messages at wholesale level is the setting at Union level of a maximum average charge per SMS sent from a visited network. The average wholesale charge should apply between any pair of operators

within the Union over a specified period.

(63) The maximum wholesale charge for regulated roaming SMS services should include all costs incurred by the provider of the wholesale service, including, inter alia, origination, transit and the unrecovered cost of termination of roaming SMS messages on the visited network. Wholesale providers of regulated roaming SMS services should therefore be prohibited from introducing a separate charge for the termination of roaming SMS messages on their network, in order to ensure the consistent application of the rules established by this Regulation.

(64) In order to ensure that the maximum charges for wholesale roaming SMS services are closer to levels reflecting underlying costs of provision and that competition can develop at the retail level, the maximum wholesale charges for regulated SMS should follow subsequent reductions.

(65) Regulation (EC) No 544/2009 considered that, in the absence of structural elements introducing competition in the market for roaming services, the most effective and proportionate approach to regulating the level of prices for Union-wide roaming SMS messages at the retail level was the introduction of a requirement for mobile operators to offer their roaming customers a euro-SMS tariff which does not exceed a specified maximum charge.

(66) Until the structural measures become effective, the transitory euro-SMS tariff should be retained at a safeguard level which, whilst ensuring that the existing consumer benefits are preserved, guarantees a sufficient margin to roaming providers while also more reasonably reflecting the underlying costs of provision.

(67) The transitory euro-SMS tariff that may be offered to roaming customers should therefore reflect a reasonable margin over the costs of providing a regulated roaming SMS service, whilst allowing roaming providers the freedom to compete by differentiating their offerings and adapting their pricing structures to market conditions and consumer preferences. Such a safeguard cap should be set at a level which does not distort the competitive benefits of structural measures and could be removed once the structural measures become effective. This regulatory approach should not apply to value-added SMS services.

(68) Roaming customers should not be required to pay any additional charge for receiving a regulated roaming SMS or voicemail message while roaming on a visited network, since such termination costs are already compensated by the retail charge levied for the sending of a roaming SMS or voicemail message.

(69) A euro-SMS tariff should automatically apply to any new or existing roaming customer who has not deliberately chosen or does not deliberately choose a special SMS roaming tariff or a package for roaming services including regulated roaming SMS services.

(70) An SMS message is a Short Message Service text message and is clearly distinct from other messages such as MMS messages or e-mails. In order to ensure that this Regulation is not deprived of its effectiveness and that its objectives are fully met, any changes to the technical parameters of a roaming SMS message which would differentiate it from a domestic SMS message should be prohibited.

(71) Data collected by national regulatory authorities indicate that high prices for average wholesale charges for data roaming services levied by visited network operators on roaming customers' roaming providers persist. Even if these wholesale charges appear to be on a downward trend, they are still very high in relation to underlying cost.

(72) (72) limitations which leave operators with no incentive to reduce their standard wholesale prices unilaterally since the traffic will be received irrespective of the price charged. This results in an extreme variation in wholesale costs. In some cases the wholesale data roaming charges applicable to non-preferred networks are six times higher than those applied to the preferred network. These excessively high wholesale charges for data roaming services lead to appreciable distortions of competitive conditions between mobile operators within the Union which undermine the smooth functioning of the internal market. They also constrain the ability of roaming providers to predict their wholesale costs and therefore to provide their customers with transparent and competitive retail pricing packages. In view of the limitations on the ability of national regulatory authorities to deal with these problems effectively at national level, a maximum wholesale charge on data roaming services should apply. Regulatory obligations should therefore be imposed with regard to regulated data roaming services at wholesale level, in order to establish a more reasonable relationship between wholesale charges and the underlying costs of provision, and at retail level to protect the interests of roaming customers.

(73) Roaming providers should not charge the roaming customer for any regulated data roaming service, unless and until the roaming customer accepts the provision of the service.

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

(75) As with the regulatory measures already in place for voice and SMS services, until the structural measures bring sufficient competition, the most effective and proportionate approach to regulating the level of prices for Union-wide retail data roaming services for a transitional period is the introduction of a requirement for roaming providers to offer their roaming customers a transitory euro-data tariff which does not exceed a specified maximum charge. The euro-data tariff should be set at a safeguard level which, whilst ensuring consumer protection until the structural measures become effective, guarantees a sufficient margin to roaming providers while also more reasonably reflecting the underlying costs of provision.

(76) The transitory euro-data tariff that may be offered to roaming customers should therefore reflect a reasonable margin over the costs of providing a regulated data roaming service, whilst allowing roaming providers the freedom to compete by differentiating their offerings and adapting their pricing structures to market conditions and consumer preferences. Such a safeguard cap should be set at a level which does not distort the competitive benefits of structural measures and could be removed once the structural measures have had an opportunity to deliver concrete and lasting gains for customers. Similar to the approach followed for voice and SMS roaming services, given the reductions foreseen in the underlying costs for the provision of retail data roaming services, the maximum regulated charges for the transitory euro-data tariff should follow a declining glide path.

(77) A transitory euro-data tariff should automatically apply to any new or existing roaming customer who has not deliberately chosen or does not deliberately choose a special data roaming tariff or a package for roaming services including regulated data roaming services.

(78) In order to ensure that consumers pay for the data services they actually consume and to avoid the problems observed with voice services after the introduction of Regulation (EC) No 717/2007 of the hidden charges for the consumer due to the charging mechanisms applied by operators, the transitory euro-data tariff should be billed on a per-kilobyte basis. Such charging is consistent with the charging mechanism already applicable at the wholesale level.

(79) Roaming providers may offer a fair-use, all-inclusive, monthly flat-rate to which no maximum charges apply and which could cover all Union-wide roaming services.

(80) To ensure that all users of mobile voice telephony may benefit from the provisions of this Regulation, the transitory retail pricing requirements should apply regardless of whether roaming customers have a pre-paid or a post-paid contract with their roaming provider, and regardless of whether the roaming provider has its own network, is a mobile virtual network operator or is a reseller of mobile voice telephony services.

(81) Where Union providers of mobile telephony services find the benefits of interoperability and end-to-end connectivity for their customers jeopardised by the termination, or threat of termination, of their roaming arrangements with mobile network operators in other Member States, or are unable to provide their customers with service in another Member State as a result of a lack of agreement with at least one wholesale network provider, national regulatory authorities should make use, where necessary, of the powers under Article 5 of the Access Directive to ensure adequate access and interconnection in order to guarantee such end-to-end connectivity and the interoperability of services, taking into account the objectives of Article 8 of the Framework Directive, in particular the creation of a fully functioning internal market for electronic communications services.

(82) In order to improve the transparency of retail prices for roaming services and to help roaming customers make decisions on the use of their mobile devices while abroad, providers of mobile communication services should supply their roaming customers with information free of charge on the roaming charges applicable to them when using roaming services in a visited Member State. Since certain customer groups might be well informed about roaming charges, roaming providers should provide a possibility

to easily opt-out from this automatic message service. Moreover, providers should actively give their customers, provided that the latter are located in the Union, on request and free of charge, additional information on the per-minute, per-SMS or per-megabyte data charges (including VAT) for the making or receiving of voice calls and also for the sending and receiving of SMS, MMS and other data communication services in the visited Member State.

(83) Transparency also requires that providers furnish information on roaming charges, in particular on the euro-voice, euro-SMS and euro-data tariffs and the all-inclusive flat-rate should they offer one, when subscriptions are taken out and each time there is a change in roaming charges. Roaming providers should provide information on roaming charges by appropriate means such as invoices, the internet, TV advertisements or direct mail. All information and offers should be clear, understandable, permit comparison and be transparent with regard to prices and service characteristics. Advertising of roaming offers and marketing to consumers should fully comply with consumer protection legislation, in particular with Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (Unfair Commercial Practices Directive). Roaming providers should ensure that all their roaming customers are aware of the availability of regulated tariffs for the period concerned and should send a clear and unbiased communication to these customers in writing describing the conditions of the euro-voice, euro-SMS and euro-data tariffs and the right to switch to and from them.

(84) Moreover, measures should be introduced to improve the transparency of retail charges for all data roaming services, in particular to eliminate the problem of 'bill shock' which constitutes a barrier to the smooth functioning of the internal market, and to provide roaming customers with the tools they need to monitor and control their expenditure on data roaming services. Equally, there should be no obstacles to the emergence of applications or technologies which can be a substitute for, or alternative to, roaming services, such as Wi-Fi.

(85) In particular, roaming providers should provide their roaming customers, free of charge, with personalised tariff information on the charges applicable to those customers for data roaming services every time they initiate a data roaming service on entering another country. This information should be delivered to their mobile device in the manner best suited to its easy receipt and comprehension, and in such a manner as to enable easy access to it at a later date.

(86) In order to facilitate customers' understanding of the financial consequences of the use of data roaming services and to permit them to monitor and control their expenditure, roaming providers should, both before and after the conclusion of a contract, keep their customers adequately informed of charges for regulated data roaming services. Such information could include examples of the approximate amount of data used by, for example, sending an e-mail, sending a picture, web-browsing and using mobile applications.

(87) In addition, in order to avoid bill shocks, roaming providers should define one or more maximum financial and/or volume limits for their outstanding charges for data roaming services, expressed in the currency in which the roaming customer is billed, and which they should offer to all their roaming customers, free of charge, with an appropriate notification, in a media format that can be consulted again subsequently, when this limit is being approached. Upon reaching this maximum limit, customers should no longer receive or be charged for those services unless they specifically request continued provision of those services in accordance with the terms and conditions set out in the notification. In such a case, they should receive free confirmation, in a media format that can be consulted again subsequently. Roaming customers should be given the opportunity to opt for any of these maximum financial or volume limits within a reasonable period or to choose not to have such a limit. Unless customers state otherwise, they should be put on a default limit system.

(88) These transparency measures should be seen as minimum safeguards for roaming customers, and should not preclude roaming providers from offering their customers a range of other facilities which help them to predict and control their expenditure on data roaming services. For example, many roaming providers are developing new retail flat-rate roaming offers which permit data roaming for a specified price over a specified period up to a 'fair use' volume limit. Likewise roaming providers are developing systems to enable their roaming customers to be updated on a real-time basis on their accumulated outstanding data roaming charges. To ensure the smooth functioning of the internal market, these developments on the domestic markets should be reflected in the harmonised rules.

(89) Customers under pre-paid tariffs may also suffer from bill shocks for the use of data roaming services. For this reason the provisions on the cut-off limit should also apply to those customers.

(90) There are considerable disparities between regulated roaming tariffs within the Union and roaming tariffs incurred by customers when they are travelling outside the Union, which are significantly higher than prices within the Union. Due to the absence of a consistent approach to transparency and safeguard measures concerning roaming outside the Union, consumers are not confident about their rights and are therefore often deterred from using mobile services while abroad. Transparent information provided to consumers could not only assist them in the decision as to how to use their mobile devices while travelling abroad (both within and outside the Union), but could also assist them in the choice between roaming providers. It is therefore necessary to address the problem of the lack of transparency and consumer protection by applying certain transparency and safeguard measures also to roaming services provided outside the Union. Those measures would facilitate competition and improve the functioning of the internal market.

(91) If the visited network operator in the visited country outside the Union does not allow the roaming provider to monitor its customers' usage on a real-time basis, the roaming provider should not be obliged to provide the maximum financial or volume limits for safeguarding customers.

(92) The national regulatory authorities which are responsible for carrying out tasks under the 2002 regulatory framework for electronic communications should have the powers needed to supervise and enforce the obligations under this Regulation within their territory. They should also monitor developments in the pricing of voice and data services for roaming customers within the Union including, where appropriate, the specific costs related to roaming calls made and received in the outermost regions of the Union and the need to ensure that these costs can be adequately recovered on the wholesale market, and that traffic-steering techniques are not used to limit choice to the detriment of customers. They should ensure that up-to-date information on the application of this Regulation is made available to interested parties and publish the results of such monitoring every six months. Information should be provided on corporate, post-paid and pre-paid customers separately.

(93) In-country roaming in the outermost regions of the Union where mobile telephony licences are distinct from those issued in respect of the rest of the national territory could benefit from rate reductions equivalent to those practised on the internal market for roaming services. The implementation of this Regulation should not give rise to less favourable pricing treatment for customers using in-country roaming services as opposed to customers using Union-wide roaming services. To this end, the national authorities may take additional measures consistent with Union law.

(94) When laying down the rules on penalties applicable to infringements of this Regulation, Member States should, inter alia, take into account the possibility for roaming providers to compensate customers for any delay or hindrance to the switch to an alternative roaming provider, in accordance with their national law.

(95) Since the objectives of this Regulation, namely to establish a common approach to ensure that users of public mobile communication networks when travelling within the Union do not pay excessive prices for Union-wide roaming services, thereby achieving a high level of consumer protection by enhancing competition between roaming providers, cannot be sufficiently achieved by the Member States in a secure, harmonised and timely manner and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(96) Regulatory obligations on wholesale charges for voice, SMS and data roaming services should be maintained until the structural measures have become effective and competition in the wholesale markets has developed sufficiently. In addition, market trends currently show that data services will progressively become the most relevant segment of mobile services, and wholesale data roaming services currently exhibit the highest level of dynamism, with prices reasonably below the current regulated rates.

(97) Retail safeguard caps should be set at sufficiently high levels which do not distort the potential competitive benefits of structural measures and could be removed completely once those measures become effective and have enabled the development of a genuine internal market. Therefore, retail safeguard caps should follow a downward trend and subsequently expire.

(98) The Commission should review the effectiveness of this Regulation in light of its objectives and the contribution to the implementation of the 2002 regulatory framework for electronic communications and the smooth functioning of the internal market. In this context, the Commission should consider the impact on the competitive position of mobile communications providers of different sizes and from different parts of the Union, the developments, trends and transparency in retail and wholesale charges,

their relation to actual costs, the extent to which the assumptions made in the impact assessment that accompanied this Regulation have been confirmed, the costs of compliance and the impact on the investments. The Commission should also, in the light of technological developments, consider the availability and quality of services which are an alternative to roaming (such as access through Wi-Fi).

(99) Regulatory obligations on wholesale and retail charges for voice, SMS and data roaming services should be maintained to safeguard consumers as long as competition at the retail or wholesale level is not fully developed. To this end, the Commission should, by 30 June 2016, assess whether the objectives of this Regulation have been achieved, including whether the structural measures have been fully implemented and competition is sufficiently developed in the internal market for roaming services. If the Commission concludes that competition has not developed sufficiently, the Commission should make appropriate proposals to the European Parliament and the Council to ensure that consumers are adequately safeguarded as from 2017.

(100) After the abovementioned review, and in order to ensure the continuous monitoring of roaming services in the Union, the Commission should prepare a report to the European Parliament and the Council every two years which includes a general summary of the latest trends in roaming services and an intermediary assessment of the progress towards achieving the objectives of this Regulation and of the possible alternative options for achieving these objectives,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

This Regulation lays down rules aimed at increasing price transparency and improving the provision of information on charges to users of roaming services.

Article 2

Definitions

1. For the purposes of this Regulation, the expressions ‘public electronic communications network’, ‘interconnection’ and ‘network access’ shall have the respective meanings given by the Communications Act 2006.

2. In addition to the definitions referred to in paragraph 1, the following definitions shall apply:

(a) ‘roaming provider’ means an undertaking that provides a roaming customer with regulated retail roaming services;

(b) ‘domestic provider’ means an undertaking that provides a roaming customer with domestic mobile communications services;

(c) *Deleted*

(d) ‘home network’ means a public electronic communications network located within Gibraltar and used by the roaming provider for the provision of regulated retail roaming services to a roaming customer;

(da) public mobile communications network’ means a public electronic communications network which is used to provide mobile communications services to end-users (within the meaning of section 2(1) of the Communications Act 2006).

(e) ‘visited network’ means a terrestrial public mobile communications network situated in a Member State that permits a roaming customer to make or receive calls, to send or receive SMS messages or to use packet switched data communications, by means of arrangements with the home network operator;

(f) ‘Union-wide roaming’ means the use of a mobile device by a roaming customer to make or receive calls from Gibraltar to a Member State or from a Member State to Gibraltar or between Member States, to send or receive SMS messages from Gibraltar to a Member State or from a Member State to Gibraltar or between Member States, or to use packet switched data communications, while in a Member State, by means of arrangements between the home network operator and the visited network operator;

(g) ‘roaming customer’ means a customer of a roaming provider of regulated roaming services, by means of a terrestrial public mobile communications network situated in Gibraltar, whose contract or arrangement with that roaming provider permits Union-wide roaming;

(h) ‘regulated roaming call’ means a mobile voice telephony call made by a roaming customer, originating on a visited network and terminating on a public electronic communications network within Gibraltar or received by a roaming customer, originating on a public electronic communications network within Gibraltar and terminating on a visited network;

(i) . . . . . .

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

(k) ‘regulated roaming SMS message’ means an SMS message sent by a roaming customer, originating on a visited network and terminating on a public electronic communications network within Gibraltar or received by a roaming customer, originating on a public electronic communications network within Gibraltar and terminating on a visited network;

(l) . . . . . .

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

(n) . . . . . .

Articles 3 to 12

Deleted

Article 13

Retail charges for regulated data roaming services

. . . . . .

Article 14

Transparency of retail charges for roaming calls and SMS messages

1. To alert roaming customers to the fact that they will 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, with basic personalised pricing information on the roaming charges 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 pricing information shall be expressed in the currency of the home bill provided by the customer's domestic provider.

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

On the occasion of each message, a customer shall have the opportunity to give notice to the roaming provider, free of charge and in an easy manner, that he does not require the automatic Message Service. A customer who has given notice that he does not require the automatic Message Service shall have the right at any time and free of charge to require the roaming provider to provide the service again.

Roaming providers shall provide blind or partially-sighted customers with the basic personalised pricing information referred to in the first subparagraph automatically, by voice call, free of charge, if they so request.

The first, second, fourth and fifth subparagraphs shall also apply to voice and SMS roaming services used by roaming customers travelling outside the Union and provided by a roaming provider.

2. In addition to paragraph 1, customers shall have the right to request and receive, free of charge, and irrespective of their location within Gibraltar or the Union, more detailed personalised pricing information on the roaming charges that apply in the visited network to voice calls and SMS, and information on the transparency measures applicable by virtue of this Regulation, by means of a mobile voice call or by SMS. Such a request shall be to a free-of-charge number designated for this purpose by the roaming provider. Obligations provided for in paragraph 1 shall not apply to devices which do not support SMS functionality.

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.

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

4. Roaming providers shall make available information to their customers on how to avoid inadvertent roaming in border regions. Roaming providers shall take reasonable steps to protect their customers from paying roaming charges for inadvertently accessed roaming services while situated in Gibraltar.

Article 15

Transparency and safeguard mechanisms for retail data roaming services

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

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

2. An automatic message from the roaming provider shall inform the roaming customer that the latter is using regulated data roaming services, and provide basic personalised tariff information on the charges (in the currency of the home bill provided by the customer's domestic provider) 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 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.

A customer who has notified his roaming provider that he does not require the automatic tariff information shall have the right at any time and free of charge to require the roaming provider to provide this service again.

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.

To this end, the roaming provider shall make available one or more maximum financial limits for specified periods of use, provided that the customer is informed in advance of the corresponding volume amounts. One of those limits (the default financial limit) shall be close to, but not exceed, £45 of outstanding charges per monthly billing period.

Alternatively, the roaming provider may establish limits expressed in volume, provided that the customer is informed in advance of the corresponding financial amounts. One of those limits (the default volume limit) shall have a corresponding financial amount not exceeding £45 of outstanding charges per monthly billing period.

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

The default limits referred to in the second and third subparagraphs shall be applicable to all customers who have not opted for another limit.

Each roaming provider shall also ensure that an appropriate notification is sent to the roaming customer's mobile device, for example by an SMS message, an e-mail or a pop-up window on the computer, when the data roaming services have reached 80 % of the agreed financial or volume limit. 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.

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

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

4. Paragraphs 2 and 3 shall not apply to machine-to-machine devices that use mobile data communication.

5. Roaming providers shall take reasonable steps to protect their customers from paying roaming charges for inadvertently accessed roaming services while situated in Gibraltar. This shall include informing customers on how to avoid inadvertent roaming in border regions.

6. This Article, with the exception of paragraph 5, 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.

Where the customer opts for the facility referred to in the first subparagraph of paragraph 3, the requirements provided in paragraph 3 shall not apply if the visited network operator in the visited country outside the Union does not allow the roaming provider to monitor its customers' usage on a real-time basis.

In such a case the customer shall be notified by an SMS message when entering such a country, without undue delay and free of charge, that information on accumulated consumption and the guarantee not to exceed a specified financial limit are not available.

Article 16

Supervision and enforcement

1. The Gibraltar Regulatory Authority shall monitor and supervise compliance with this Regulation.

2. The Gibraltar Regulatory Authority shall make up-to-date information on the application of this Regulation publicly available in a manner that enables interested parties to have easy access to it.

3. The Gibraltar Regulatory Authority shall be alert to the particular case of inadvertent roaming in the border regions of neighbouring Member States and monitor whether traffic-steering techniques are used to the disadvantage of customers.

The Gibraltar Regulatory Authority shall monitor and collect information on inadvertent roaming and take appropriate measures.

4. The Gibraltar Regulatory Authority shall have the power to require undertakings subject to obligations under this Regulation to supply all information relevant to the implementation and enforcement of this Regulation. Those undertakings shall provide such information promptly on request and in accordance with time limits and level of detail required by the Gibraltar Regulatory Authority.

5. The Gibraltar Regulatory Authority may intervene on their own initiative in order to ensure compliance with this Regulation. In particular, they shall, where necessary, make use of the powers under Regulation 6 of the Communication (Access) Regulations 2006 to ensure adequate network access and interconnection in order to guarantee the end-to-end connectivity and interoperability of roaming services, for example where customers are unable to exchange regulated roaming SMS messages with customers of a terrestrial public mobile communications network in a Member State as a result of the absence of an agreement enabling the delivery of those messages.

6. Where the Gibraltar Regulatory Authority finds that a breach of the obligations set out in this Regulation has occurred, it shall have the power to require the immediate cessation of such a breach.

Articles 17 to 21

Deleted

Article 22

Entry into force and expiry

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union* and its provisions shall apply from that day save as otherwise provided for in specific Articles.

It shall expire on 30 June 2022.

ANNEX I

Repealed Regulation with its amendment

(referred to in Article 21)

Regulation (EC) No 717/2007 of the European Parliament and of the Council (OJ L 171, 29.6.2007, p. 32).	
Regulation (EC) No 544/2009 of the European Parliament and of the Council (OJ L 167, 29.6.2009, p. 12).	only Article 1

ANNEX II

Correlation Table

Regulation (EC) No 717/2007	This Regulation
Article 1	Article 1
—	Article 1(2)
Article 1(2)	Article 1(3)
Article 1(3)	Article 1(4)
Article 1(4) first subparagraph, first sentence	Article 1(5)
Article 1(4) first subparagraph, second sentence	Article 1(6) first subparagraph Article 1(7) first subparagraph
Article 1(4) second subparagraph, first sentence	Article 1(6) second subparagraph, first sentence Article 1(7) second subparagraph, first sentence

Article 1(4) second subparagraph, second sentence	Article 1(6) second subparagraph, second and third sentences Article 1(7) second subparagraph, second and third sentences
Article 2(1)	Article 2(1)
Article 2(2), introductory words	Article 2(2), introductory words
Article 2(2), point (a)	Article 2(2), point (i)
Article 2(2), point (b)	Article 2(2), point (a)
—	Article 2(2), point (b)
—	Article 2(2), point (c)
Article 2(2), point (c)	Article 2(2), point (d)
Article 2(2), point (g)	Article 2(2), point (e)
Article 2(2), point (d)	Article 2(2), point (f)
Article 2(2), point (f)	Article 2(2), point (g)
Article 2(2), point (e)	Article 2(2), point (h)
Article 2(2), point (i)	Article 2(2), point (j)
Article 2(2), point (j)	Article 2(2), point (k)
Article 2(2), point (h)	Article 2(2), point (l)
Article 2(2), point (k)	Article 2(2), point (m)
—	Article 2(2), point (n)
—	Article 2(2), point (o)
—	Article 2(2), point (p)
—	Article 2(2), point (q)
—	Articles 3, 4, 5 and 6
Article 3(1)	Article 7(1)
Article 3(2)	Article 7(2)
Article 3(3), first subparagraph	—
Article 3(3), second subparagraph	Article 7(3)
Article 4(1)	Article 8(1)
Article 4(2)	Article 8(2)
Article 4(3), first subparagraph	—
Article 4(3), second subparagraph	Article 8(3)
Article 4(3), third subparagraph	Article 8(4)
Article 4(4)	Article 8(5)
Article 4a	Article 9

Article 4b	Article 10
Article 4b(7)	—
Article 4c	Article 11
—	Article 12
—	Article 13
Article 6(1) first to fifth subparagraphs	Article 14(1) first to fifth subparagraphs
—	Article 14(1) sixth subparagraph
Article 6(2)	Article 14(2)
Article 6(3) first and second subparagraphs	Article 14(3) first and second subparagraphs
—	Article 14(3) third subparagraph
—	Article 14(4)
Article 6a	Article 15
—	Article 15(4)
—	Article 15(5)
—	Article 15(6)
Article 6a(4)	—
Article 7	Article 16
—	Article 16(3) second subparagraph
Article 8	Article 17
Article 9	Article 18
Article 10	—
Article 11(1) introductory words	Article 19(1) introductory words
—	Article 19(1), points (a) and (b)
Article 11(1) first subparagraph, first to fourth indent	Article 19(1), points (c) to (f)
—	Article 19(1), points (g) and (h)
Article 11(1) second subparagraph	—
—	Article 19(2)
Article 11(2)	Article 19(3)
—	Article 19(4)
Article 12	Article 20
—	Article 21
Article 13	Article 22