EUROPEAN COMMISSION



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**COMMISSION IMPLEMENTING REGULATION (EU) No …/.. of XXX**

**on separate sale of regulated retail roaming services in accordance with Regulation (EC) No 531/2012 of the European Parliament and of the Council on roaming on public mobile communications networks within the Union**

(Text with EEA relevance)

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**COMMISSION IMPLEMENTING REGULATION (EU) No …/.. of XXX**

**on the separate sale of regulated retail roaming services within the Union**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 531/2012 of the European Parliament and of the Council on roaming on public mobile communications networks within the Union1, and in particular Article 5(2) thereof,

After consulting the Body of European Regulators for Electronic Communications,

Whereas:

(1) Regulation (EU) No 531/2012 introduces the concept of separate sale of regulated retail roaming services. Firstly, Article 4(1) of Regulation (EU) No 531/2012 imposes an obligation on domestic providers to enable their customers to access regulated voice, SMS and data roaming services, provided as a bundle, by any alternative roaming provider. Furthermore, the provisions on separate sale of regulated retail roaming services as laid down in Article 4(1) include the requirement for domestic providers and roaming providers not to prevent roaming customers from accessing regulated data roaming services provided directly on a visited network by an alternative roaming provider.

(2) In order to ensure consistent and simultaneous implementation across the Union of the separate sale of regulated retail roaming services, Regulation (EU) No 531/2012 requires the Commission to adopt, by means of implementing acts, detailed rules on the information obligations about the possibility for roaming customers to opt for an alternative roaming provider and on a technical solution for the implementation of the separate sale of regulated retail roaming services.

(3) In accordance with Article 5(4) of Regulation (EU) No 531/2012, the technical solution to implement the separate sale of regulated retail roaming services may combine one or more technical modalities for the purposes of meeting all the criteria set out in Article 5(3) of Regulation (EU) No 531/2012. Several technical modalities should therefore need to be implemented, if not all of these criteria can be met by only one technical modality. This Regulation should lay down detailed rules on this

1 OJ L 172, 30.06.2012, p. 10.

technical solution comprising the requirements for domestic providers to deploy network elements and to provide related services concerning each technical modality, in order to ensure access to these facilities necessary to allow alternative roaming providers to offer separate roaming services and to provide for the switching process between donor and recipient roaming providers.

(4) At the same time, the technical solution should make it possible to give effect to the obligations referred to in Article 4(1) of Regulation (EU) No 531/2012. Therefore the technical solution should ensure both the possibility for customers to access regulated voice, SMS and data roaming services, provided as a bundle by any alternative roaming provider and that domestic providers and roaming providers comply with the obligation not to prevent customers from accessing regulated data roaming services provided directly on a visited network by an alternative roaming provider.

(5) Currently all retail roaming services are provided together with domestic mobile communication services by the domestic provider. Regulation (EU) No 531/2012 enables the roaming customer to select an alternative roaming provider for regulated roaming services provided as a bundle and to acquire those roaming services separately from the domestic mobile services. In this regard, the roaming customer concludes a contract or arrangement with an alternative roaming provider for the provision of those services.

(6) There are several technical modalities to implement the separate sale of roaming services as a bundle, including dual International Mobile Subscriber Identity (dual- IMSI) (two separate IMSI on the same SIM card) and single IMSI (the sharing of one IMSI between the domestic and roaming providers). The dual IMSI technical modality is based on a second profile on the roaming customer's SIM card that can be used by the alternative roaming provider for the sale of regulated roaming services, while the first profile is still used by the domestic provider for the sell of domestic services and possibly non-regulated roaming services. Under the single IMSI technical modality the separate roaming services are technically still provided by the domestic provider, which serves as the host mobile network operator to the alternative roaming provider. The separate roaming services are provided on a wholesale basis to the alternative roaming provider, which resells the services to the roaming customer at retail level. The most basic version is a pure resale option. Furthermore, there are a number of potential enhancements to the pure resale technical modality that enable the alternative roaming provider to control which visited networks are to be used preferably and to recover discounts on the wholesale roaming services purchased from the host mobile network operator (MNO) based on wholesale agreements with visited network operators or wholesale aggregators.

(7) In accordance with Article 5(1) of Regulation (EU) No 531/2012, access to the network elements and services necessary for the separate sale of regulated retail roaming services should be provided free of charge. Access to facilities and support services for the separate sale of regulated retail roaming services includes the facilities and services needed in the process of switching of a customer. Accordingly no switching transaction charge should be levied from any roaming provider for the change to or from an alternative roaming provider.

(8) The Body of European Regulators for Electronic Communications ('BEREC') has carried out its expert assessment on the solutions to implement separate roaming

services2. BEREC considers that the implementation of dual-IMSI requires significant development and standardisation activity and estimates that the implementation costs would impose a significant overhead on retail prices. Given that this technical modality would also require upgrading of the currently used SIM cards to include dual-IMSI functionality, the dual-IMSI technical modality fails to provide a cost- effective and consumer-friendly option for the separate sale of regulated retail roaming services.

(9) In contrast, the single IMSI technical modality appears more appropriate in the light of the criteria set out in Article 5(3) of Regulation (EC) No 531/2012. Firstly, in relation to criteria (h), (i), (j), (k) of Article 5(3) all identified technical modalities including the single IMSI technical modality can be implemented in a way that meets these criteria. Secondly, the single IMSI is consumer and user-friendly given that the roaming service is technically provided in the same way as it has been so far and therefore the same seamless user experience can be expected. Thirdly, the implementation costs of single IMSI are lower than for dual IMSI and no major standardisation activities are needed to enable it. BEREC also considers that there are no implementation bottlenecks for implementing single IMSI. It further estimates that implementation costs are low in particular for those MNOs which already host mobile virtual network operators (MVNOs) or resellers on their network, as technical requirements for supporting alternative roaming providers are similar to those for supporting domestic MVNOs. Furthermore, the rapid growth of domestic MVNOs in many EU Member States supported by different MNOs and the corresponding experience accumulated in providing host support for MVNOs means that costs will not be unduly high for MNOs not already supporting domestic MVNOs.

(10) The efficiency of the single IMSI technical modality in terms of competition effects could be enhanced if the alternative roaming providers could steer the roaming traffic to a visited network of their preference. However, the implementation of traffic steering arrangements for the enhanced single IMSI technical modality would be justified only if the implementation costs were proportionate to the expected competition benefits. So far, there is no evidence that the necessary traffic steering arrangements for an enhanced single IMSI technical modality could be implemented at reasonable cost by 1 July 2014. Therefore, at this stage, the single-IMSI technical modality in the form of roaming resale is considered as being sufficient to meet all criteria provided in Article 5(3) except criteria (b) and (e), which are only partly met.

(11) Neither the dual IMSI technical modality nor the single IMSI technical modality nor its enhancements meet all the criteria as provided of Article 5(3) of Regulation (EU) No 531/2012. In particular, none of them make it possible to give effect to the obligation on domestic providers and roaming providers not to prevent customers from accessing regulated data roaming services provided directly on a visited network by an alternative roaming provider. However, at least one of the technical modalities of the technical solution needs to provide for the ability to give effect to this obligation as one of the obligations imposed in Article 4(1) of that Regulation.

(12) In the current implementation and configuration of home networks such local data roaming services are prevented. A second technical modality is therefore needed to

2 Reference to the final BEREC document once available.

respond to the requirement of Regulation (EU) No 531/2012. In order to separate local data roaming services from the domestic bundle, visited network operators should not be prevented from not only from technically processing the roaming customer's data traffic, but also from providing the service at retail level.

(13) On the other hand, the single IMSI technical modality does not make it possible to serve all categories of consumer demand on competitive terms, such as the intensive usage of data services. Since wholesale caps for data roaming services are not strictly cost-oriented and will not decrease after 2014 despite an expected decrease in wholesale cost, it seems unrealistic that alternative roaming providers that have to rely on wholesale data roaming services would be able to offer retail data roaming services for heavy data users at attractive prices compared to price levels for domestic mobile data services. However, a technical modality that gives effect to the obligation on domestic providers and roaming providers not to prevent customers from accessing regulated data roaming services provided directly on a visited network by an alternative roaming provider puts alternative data roaming providers in a position to provide local data roaming services, i.e. data roaming services without relying on a wholesale data roaming service.

(14) Retail data roaming services are currently provided by domestic providers based on wholesale agreements with the visited network operators. Data roaming traffic is sent and received over the radio access network of the visited network operator, and routed between visited network and home network. The home network operator provides the connection to the internet service and is charges the roaming customer for the data roaming service. The current GSM and UMTS standards already enable the visited network operator to technically handle data roaming traffic and to provide the connection to the internet service without the necessity of routing between home and visited network. However, according to the current industry practice, the home network operator still charges the customer for the data roaming service and the visited network operator provides the processing of the traffic as a wholesale service for the home operator.

(15) In the case of temporary local data roaming services, the roaming customer can, when travelling, and if the service is offered in the visited country, choose a local mobile network operator in that country for the provision of retail data roaming services directly. Home-network based roaming is not used for data sessions. Instead the customer uses and is billed by the visited network directly. This kind of service would provide a similar customer experience to that of wireless local area networks such as WIFI currently used by many laptop, smart phone or tablet users abroad. Voice, SMS and other associated roaming services would be provided by the home network operator as usual.

(16) In the case of permanent local data roaming services the roaming customer concludes a contract with a provider of local data roaming services instead of the roaming provider using a home network. In this case, an alternative roaming provider, e.g. a mobile network operator or reseller, would provide local data roaming services in one or more countries to roaming customers on a permanent basis based on its own network footprint and/or resale agreements with a mobile network operator in each country.

(17) There are several ways to implement the requirement not to prevent local data roaming services. Basic requirements are the implementation and activation of the processing of data roaming traffic in the visited network and the requirement not to prevent the manual or automatic selection of a visited network. Possible enhancements include the modification of traffic steering elements in order not to interrupt an ongoing local data roaming session and the implementation of specific facilities to assist roaming customers in selecting a visited network or to support automatic selection of visited networks.

(18) Whereas the most simplistic commercial offers may not best meet the requirement for user-friendliness by requiring e.g. the roaming customer to change terminal settings or to send a code by SMS to allow for the service and to select visited network, it can be expected that depending on the popularity of the service, local data roaming service providers, terminal and application suppliers or other actors will develop market-based solutions for enhanced user-friendliness. Consumer-friendliness of local data roaming services is considered good due to the flexibility to opt for and disconnect from local data roaming service providers instantaneously. Local data roaming services allow alternative roaming providers to exploit own infrastructure assets and commercial agreements for data roaming, e.g. through resale arrangements or permanent multi- country local data roaming services. According to BEREC, local data roaming services can be implemented rather quickly and are cost-effective as most of the costs are incurred by the alternative providers in proportion to the actual roll-out of local data roaming services. There is a high degree of interoperability as standards for the implementation of traffic processing in the visited network already exist. Therefore, the technical modality allowing for access to local data roaming services meets all the criteria provided in Article 5(3) of Regulation (EC) No 531/2012, except criteria (b) and (e), which are only partly met.

(19) The technical modality allowing for access to local data roaming services only allows access to data roaming services. Therefore, it does not fully meet criterion (e) of Article 5(3) of Regulation (EC) No 531/2012,. Furthermore this technical modality does not fully meet criterion (b), because only data users are expected to be attracted by access to local data roaming services.

(20) The technical solution combining the two technical modalities, namely the single IMSI technical modality, implemented as a roaming resale, and the technical modality allowing access to local data roaming services on a visited network, meets all the criteria of Article 5(3) of Regulation (EC) No 531/2012. Whereas neither the single IMSI technical modality nor the technical modality allowing access to local data roaming services alone fully meet criteria (b) and (e), they are complementary and meet criteria (b) and (e) only in combination.

(21) In accordance with Article 4(2) of Regulation (EC) No 531/2012, the switch between roaming providers is to be carried out without undue delay, and in any case within the shortest possible period of time depending on the technical solution chosen for the implementation of the separate sale of regulated retail roaming services. In the case of the single IMSI technical modality and in the case of access to permanent local data roaming services, like the change of provider for domestic services, no further interaction with the user is necessary after the conclusion of the contract with the alternative roaming provider. Those technical modalities allow the switching to be implemented within a similar period of time as the one to switching for domestic

services, which is of one working day. Therefore, in the case of the single IMSI technical modality and the permanent provision of local data roaming services, any switching time period to and from an alternative roaming provider that exceeds the time period established for switching in domestic services should be considered as undue delay as there are no underlying technical reasons to delay such switch any further than for a comparable switch between domestic services. In the case of the technical modality allowing for access to temporary local data roaming services, the roaming customers are expected to select the alternative roaming provider for local data roaming services while travelling abroad and just before their intention to use the local data roaming service. The technical modality allows for the switch to or between providers of local data roaming services to be carried out instantaneously from the conclusion of the contract with the recipient roaming provider.

(22) Article 4(4) of Regulation (EU) No 531/2012 includes general provisions as to how and when customers are to be informed about the possibility to choose an alternative roaming provider. The content of the information and the possible ways of communicating it to a consumer need further specification in order to make it easier for the consumer to make an informed choice. Improving consumer awareness of the roaming market requires a combination of all available means to help consumers benefit from open markets.

(23) The measures provided for in this Regulation are in accordance with the opinion of the Communications Committee,

HAS ADOPTED THIS REGULATION:

*Article 1*

**Subject matter and scope**

This Regulation lays down detailed rules for the separate sale of regulated retail roaming services across the Union.

It lays down detailed rules on a technical solution for the implementation of the separate sale of regulated retail roaming services. It also lays down detailed rules on the information obligations of domestic providers towards their roaming customers concerning the possibility to opt for roaming services provided by any alternative roaming provider.

*Article 2*

**Definitions**

For the purposes of this Regulation, the following definitions shall apply:

(1) 'resale of retail roaming services' means a wholesale agreement between the alternative roaming provider and the domestic provider for the purposes of the provision of regulated roaming services, provided as a bundle, and associated services, such as mailbox services, that are usually available to roaming customers, without the need for roaming customers to change their SIM card or mobile device;

(2) 'local data roaming service' means a regulated data roaming service provided, temporarily or permanently, to roaming customers directly on a visited network, by an alternative roaming provider without the need for roaming customers to change their SIM card or mobile device;

(3) 'EU-Internet access point name (APN)' means a common identifier set, manually or automatically, in the roaming customer's mobile device and recognised by the home network and visited network to indicate the roaming customer's choice to use local data roaming services;

(4) 'traffic steering' means a control function used by the home network operator aimed at the selection of visited networks for its roaming customers based on a priority list of preferred visited networks;

(5) 'network barring' means a control function used by the home network operator aimed at avoiding the selection of certain visited networks for its roaming customers;

(6) 'Durable medium’ means any medium which enables a customer to store information addressed personally to that customer in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.

(7) 'recipient roaming provider' means a roaming provider, which will provide roaming services instead of roaming services currently provided by the donor roaming provider after the change of roaming provider;

(8) 'donor roaming provider' means a roaming provider, which is currently providing the roaming services that will be provided by the recipient roaming provider after the change of roaming provider.

*Article 3*

**Technical modality for the implementation of the separate sale of regulated retail roaming services provided as a bundle**

1. For the purpose of enabling roaming customers to access regulated voice, SMS and data roaming services, provided as a bundle by any alternative roaming provider, domestic providers operating a terrestrial public mobile communication network shall deploy the necessary network elements and shall provide the relevant services that allow for the resale of retail roaming services, to the domestic provider's customers by the alternative roaming provider domestic mobile communication services without the need for the roaming customers to change their SIM card or mobile device.

2. The network elements and relevant services provided in paragraph (1) shall cover inter alia:

a) facilities necessary for the procedure to change the roaming provider in accordance with paragraph 4,

b) facilities necessary to provide customer information, including a provisioning interface and real-time billing information for both post-paid and pre-paid customers,

c) facilities necessary to support the implementation of the financial limits for the specified period of use of data roaming services in accordance with Article 15 of Regulation (EU) No 531/2012.

3. Domestic providers operating a terrestrial public mobile communication network shall meet all reasonable requests for access to network elements and services in accordance with paragraphs 1 and 2 and for wholesale roaming resale access for the purpose of the separate sale of regulated retail roaming services in accordance with Article 3 of Regulation (EC) No 531/2012.

4. The donor roaming provider shall collaborate with the recipient roaming provider in order to ensure that roaming customers who have concluded a contract with a recipient roaming provider shall use the services provided by this provider within one working day. The switch is deemed to start at the moment of contract with the recipient roaming provider.

*Article 4*

**Technical modality for the implementation of accessing local data roaming services on a visited network**

1. For the purpose of not preventing roaming customers from accessing regulated data roaming services provided directly on a visited network by an alternative roaming provider, domestic providers operating a terrestrial public mobile communication network shall implement the necessary network elements and shall provide the relevant services that allow for the processing of data roaming traffic in the visited network and for the retail provisioning of local data roaming services by alternative roaming providers.

2. The network elements and relevant services provided in paragraph (1) shall cover inter alia:

(a) facilities necessary for the roaming customer to switch between a roaming provider using a home network and an alternative roaming provider of local data roaming services for the purpose of using data roaming services in accordance with paragraphs 4 and 5;

(b) facilities allowing for the establishment of user access profiles for the EU- internet APN in the home network and for a mechanism in the home network that enables the processing of data roaming traffic in the visited network and the retail provision of the data roaming service by the visited network operator for these user access profiles;

(c) facilities ensuring that traffic steering, network barring, or other mechanisms applied in the home network do not prevent the user from selecting the visited network for local data roaming services of their choice;

(d) facilities ensuring that the user is not disconnected from the visited network for local data roaming services of their choice due to traffic steering or other mechanisms applied in the home network;

(e) facilities allowing for a switch to and from an alternative roaming provider in conformity with paragraphs (4)and (5).

3. If an alternative roaming provider intends to offer local data roaming services, domestic providers operating a terrestrial public mobile communication network shall, for this purpose, meet reasonable requests for access from an alternative roaming provider concerned, which allows for the provision of local data roaming services by the alternative roaming provider and of the remaining roaming services by the roaming provider using a home network to the roaming customers concerned during the usage of local data roaming services

4. The donor roaming provider shall collaborate with the recipient roaming provider in order to ensure that roaming customers who have concluded a contract with a recipient roaming provider for the provision of permanent local data roaming services shall use the services provided by this provider within one working day.

5. The donor roaming provider shall collaborate with the recipient roaming provider in order to ensure that roaming customers who have concluded a contract with a recipient roaming provider for the provision of temporary local data roaming services shall use the services provided by this provider instantaneously from the moment a recipient roaming provider sends a request to a donor provider.

*Article 5*

**Technical solution to implement the separate sale of regulated retail roaming services**

The domestic providers operating a terrestrial public mobile communication network shall implement cumulatively the technical modality for the implementation of the separate sale of regulated retail roaming services provided as a bundle and the technical modality for implementing access to local data roaming services.

*Article 6*

**Contractual conditions**

1. Domestic providers shall ensure that contracts concluded or renewed after 1 July

2014, allow the customer to switch roaming provider at any time and free of any charges applied by the donor roaming provider, in particular:

- related to the switch,

- for roaming services provided by the recipient roaming provider.

2. By 1 July 2014, domestic providers shall amend existing contracts in line with requirements laid down in paragraph 1.

*Article 7*

**Customer information on separate sale of regulated retail roaming services**

1. By 1 July 2014, domestic providers shall provide the following information all their existing roaming customers about the possibility to opt for separate roaming services provided by alternative roaming providers:

(a) details on the necessary steps to be taken by roaming customers consumers to switch to or between alternative roaming providers;

(b) the possibility to switch to or between alternative roaming providers at any moment and free of charge;

(c) the amendments that will be made to the existing contract according to Article

6;

(d) the period in which the switch to or between alternative roaming providers will be effected.

2. A domestic provider shall provide information to new customers before the contract is concluded about the possibility to opt for separate roaming services provided by alternative roaming providers. In particular, they shall provide information about:

(a) details on the necessary steps to be taken by the customer to switch to or between alternative roaming providers;

(b) the possibility to switch to or between alternative roaming providers at any moment and free of charge;

(c) contract terms which reflect requirements of paragraph 1 of Article 6.

At the time of concluding a new contract or renewal of an existing contract, customers shall confirm explicitly that they have been informed about the possibility to opt for an alternative roaming provider.

3. Information referred to by paragraphs (1) and (2) shall be provided on paper or another durable medium in a clear, comprehensible and prominent manner and in an easily accessible form.

Roaming customers shall have the right to request and receive, free of charge, more detailed information on the possibility to switch roaming providers at any time.

*Article 8*

**Entry into force**

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

It shall apply from 1 July 2014 to 30 June 2022.

This Regulation shall be binding in its entirety and directly applicable in all Member States. Done at Brussels,

*For the Commission*

*The President*