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## INTERNATIONAL ROAMING REGULATION

### ERG GUIDELINES (DRAFT)

The Regulation of the European Parliament and of the Council amending Regulation (EC) No 717/2007 on roaming on public mobile telephone networks within the Community and Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services is expected to be adopted in June. The bulk of its provisions will take effect from 1 July. In order to promote consistent implementation across Europe, ERG intends to update its existing Guidelines (ERG (07) 86rev2 081215) to address the changes made by the amending Regulation.

Accordingly, ERG is publishing today a working draft of revised ERG Guidelines and welcomes comments from all interested parties. ERG intends to publish a definitive version of its revised Guidelines before 1 July. Therefore, it requests comments no later than Wednesday 17 June. It would especially welcome comments on the draft Guidelines relating to alert messages in respect of data roaming, the operation of the %out-off limit+and the application of the Regulation to value-added services.

#### Introduction

1) These ERG Guidelines are designed to complement Regulation ..., which amends the first Roaming Regulation (EC) No 717/2007 on roaming on public telephone networks within the community and Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (the Framework Directive). For countries where Regulation ... has entered into force, these Guidelines replace the ERG Guidelines published on 15 December 2008, which discussed the first Roaming Regulation (EC) No 717/2007.

2) As before, these Guidelines are complementary to the provisions set out in the Regulation, and are not presented as a legal interpretation of those provisions.

## **Retail issues**

### **Transfers between tariffs**

3) Article 4(4) and Article 4b(6) grant the right to all customers to request to switch to or from the Eurotariff or to or from the Euro-SMS tariff, respectively. The switch must be made within 1 working day of the request. The service provider is permitted to enforce a minimum specified period for the customer's previous roaming tariff before activating such a request, provided that it does not exceed 3 months.

### **Bundling of regulated retail roaming tariffs and other retail tariffs**

4) Article 4(1) and Article 4b(1) provide that a Eurotariff and a Euro-SMS tariff, respectively, may be 'combined with any retail tariff'. Therefore retail tariffs for services other than regulated voice roaming calls or regulated roaming SMS (e.g. tariffs for domestic and international voice calls, for domestic and international SMS and for mobile data services) must not be offered on the basis that they cannot be combined with the Eurotariff or the Euro-SMS tariff. Article 4b also provides that a 'Euro-SMS tariff may always be combined with a Eurotariff'.

5) However, it is not the intention of the Regulation to prohibit the sale of special roaming tariffs that may be advantageous to certain customers. The continuation of such tariffs is explicitly provided for in Article 4(3) for voice, and Article 4b(4) for SMS. For example, tariffs that provide attractive rates for roaming calls to or from certain third countries and higher rates (than under the Eurotariff) for roaming calls within Europe may be offered, provided at all times that customers can choose the Eurotariff in accordance with Article 4(4).

### **Basic personalised pricing information: voice, SMS and data**

6) Unless they have opted not to receive such information, all customers are entitled to receive at least one automatic message providing basic roaming information for the visited Member State, which is personal to that customer.

7) For data roaming, the information must be sent to the customer's mobile phone or other device, for example if they use a PDA or a laptop with a dongle. The means of sending the information are left to the provider's discretion, for example by SMS, e-mail or a pop-up window. ERG considers it important that the 'information should be delivered in the manner best suited to its easy receipt and comprehension' (Recital (34)) and in sufficient detail to enable the customer to make a basic, informed purchasing decision (subject to the ability to obtain more detailed information by free phone service). ERG understands that at present, a landing page or a pop-up window is technically difficult to provide for mobile handsets. Nonetheless, for all devices to the extent technically feasible, ERG considers it good practice to provide the information in a way that does not require the customer to navigate away from the data roaming service in order to access it, for example by means of a free of charge landing page that opens when the data session is first initiated, before any data transfer takes place.

8) The following information must be provided to roaming customers:

a) the maximum charges while in the visited country for roaming voice calls made back to the subscriber's home country and within the visited country, for sending regulated roaming SMS, and for using regulated data roaming services, which includes charges for sending a roaming MMS. Providers must

also send information on maximum charges for calls received and for MMS received that the customer will pay under his or her tariff scheme;

b) the possibility of accessing the emergency services by dialling 112 free of charge; and

c) a free phone number from which the customer can obtain more detailed personalised information on voice, SMS, MMS or data services and information on the transparency measures in the Regulation, by means of a voice call or an SMS.

Customers have the possibility to opt-out of receiving information on regulated voice and SMS roaming services, 112, and the free phone number for more detailed information on the one hand, and the possibility to opt-out of receiving information on regulated data roaming services, including MMS, on the other hand.

9) In addition, ERG considers that it would be good practice to:

d) where necessary, distinguish between charges that differ according to the host network used in the visited country; and

e) specify the maximum rates that a consumer will pay for roaming voice calls made and received where these are higher than the rates specified under (a) above, for example for a regulated call to a third country

#### When should the basic information be provided?

10) Providers are required to send information on voice, SMS, 112 and the free phone number for detailed information (Article 6) to the customer 'without undue delay and free of charge, when he enters a Member State other than that of his home network', i.e. when the customer's handset connects for the first time to a foreign network. This maximises the chance that the customer has received the message by the time he or she uses voice or SMS roaming, and so can make an informed purchasing decision.

11) In contrast, information on data roaming, which includes MMS, should be 'delivered every time the roaming customer enters a Member State other than that of his home network **and** initiates for the first time a regulated data roaming service in that particular Member State' (Article 6a(2), emphasis added). ERG understands that the bold **and** in this provision requires only one message to be sent when both conditions are met (entry into another Member State plus initiation of a data roaming service).

12) Where for technical reasons the basic information on roaming prices is provided by SMS, MMS or e-mail and where it is only sent when the customer first initiates a data roaming session, ERG is concerned that there is a strong likelihood that the customer will not in practice be alerted before data transmission has begun. That is because the customer would generally have to leave their intended activity to check their SMS, MMS or e-mail and see the tariff information. Consumers seem unlikely to leave their e-mail continuously open, in the way that business users might. This problem is even greater where the roaming customer sends an MMS, as any tariff information would inevitably arrive after the MMS has been sent.

13) Therefore, ERG advises that the customer's interests in transparency will best be met if providers send messages covering all required information in Article 6 and

Article 6a according to the following principles, depending on the device used. (Of course, there is no prohibition on sending of further messages. In particular, a 'message' may consume more than one standard SMS) The principles are:

- **Mobile handsets, including PDAs** . one message must always be sent on crossing the border. Depending on the circumstances, a second message may be necessary later.
  - The customer enters another Member State, the data service is connected and the customer has previously authorised the provider to charge for roaming data services (this is normally the case for PDAs). Using MMS to alert the customer may meet these conditions where the customer intentionally initiates a regulated data roaming session in order to access the content of the MMS. (Both receiving and accessing such MMS must be free of charge)).
    - one message to provide the information required under Article 6 and Article 6a.
  - The customer enters another Member State but the conditions above are not satisfied (for example, this may frequently be the case for traditional mobile handsets)
    - one message to provide the information required under Article 6. For customers who may use data services, ERG considers it is best practice to also send the information required under Article 6a, or a free phone number to access such information, at this stage. Customers who may use voice and SMS services only could opt-out of this extra information.
    - if and when the customer subsequently connects to data roaming services (and has previously authorised the provider to charge for those services), another message should be sent to provide the information under Article 6a, regardless of whether that information was sent when the customer first entered the Member State.
- **Laptop/dongle** . the network is only able to tell that the user has entered a new Member State when the data session is initiated.
  - One message to provide the information required under Article 6a. For example, this could be provided free of charge on the landing page that opens when the data session is first initiated, before any data transfer takes place.

14) There is no requirement for further messages to be sent if the host network changes during a visit to a country. The information relevant to the new host network should have been covered by the initial message, as noted above.

#### **Additional detailed personalised pricing information and information on transparency measures**

15) Where a customer contacts their home provider regarding further detailed information, the home provider should ensure that the information is immediately available, regardless of time of day. If using automated machines to comply with the

obligation, the home provider should ensure that the customer can access the required information speedily and easily.

16) Furthermore, if contacted via SMS, it would be reasonable for the home provider to opt to send only essential personalised pricing information applying to voice calls, SMS, MMS, and other data communication services to its customers, where the detail of charges is complex. In this case, the home provider should make reference in its SMS message to the free of charge number designated for voice calls to get additional information.

17) The Recitals to the Regulation say that any network connection should be established with the user's consent and there should be no data downloading, including software updating and e-mail retrieval, without the user's prior consent or request unless the user has opted out of this protection (Recital 32), home providers should not charge the roaming customer for any regulated data roaming service, unless and until the roaming customer accepts the provision of the service (Recital 32a), and the home provider should give examples for data roaming applications, such as e-mail, picture, web browsing, by indicating their approximate size in terms of data usage (Recital 34a). ERG considers that it is very important principle that customers are able to monitor, control and give their consent to any expenditure. In above cases, ERG considers providers may meet this aim, for example, by requiring consent at the time of subscription and by providing clear and easily accessible in the terms and conditions for the service, in information on their website and in other literature.

18) Recital 33 provides that there should be no obstacles to the emergence of applications or technologies which can be a substitute for, or alternative to, roaming services. ERG understands that the European Council and the European Parliament wish to discourage blocking and to promote the availability of alternative or substitute services to roaming like WiFi, VoIP and Instant Messaging services. To the extent that any obstacles to accessing these alternative or substitute services persist, ERG considers that providers should provide clear and easily accessible customer information at the time of subscription, in the terms and conditions for the service, and on their website and in other literature.

### **Financial or volume limit on data roaming consumption**

19) Article 6a(3) of the Regulation requires providers to make available to their customers one or more financial or volume limits on data roaming use during an agreed specified period, subject to the customer's consent to continue. This is intended to enable customers to avoid running up bills that are higher than intended or expected. ERG understands the 'customer' to be the contracting party, so that a single limit would apply to all of the SIMs within a family contract.

20) In the period 1 March 2010 to 30 June 2010, providers must allow customers to select a limit (i.e. during this period the limit is 'opt-in').

21) From 1 July 2010 the limit becomes 'opt-out': providers must apply the default financial limit or default volume limit automatically to all customers who have not already chosen a limit.

22) The default financial limit must be close to but not exceed 50 " of outstanding charges per monthly billing period (excluding VAT). The default volume limit must have a corresponding financial limit not exceeding 50 " of outstanding charges per monthly billing period (excluding VAT). For the default financial limit, providers must make the customer aware in advance of the corresponding amount in volume terms.

For the default volume limit, providers must make the customer aware in advance of the corresponding amount in financial terms. Note that the limit relates to the accumulated expenditure per specified period, and not per data session.

22) ERG understands that the financial or volume limit must be made available to post-pay and pre-pay customers. Although pre-pay customers may not be able to spend more than their credit balance, they do not necessarily expect or intend to spend all of their credit on data roaming. That may be unavoidable if the customer has credit lower than the financial or volume limit provided under Article 6a(3), but ERG considers it important that customers with more significant amounts of pre-pay credit are afforded protection under the Article. Limiting the amount of pre-pay credit to a specified sum (in particular, 50 ") is not a means of complying with Article 6a(3), since the customer might still maintain a wish not to spend all of their credit on data services.

23) Some customers pay for data roaming services according to a tariff where data access is bought separately from other mobile services, paid for in advance and for a fixed, pre-defined non-recurring sum and non-recurring duration, after which the data session ends unless and until the customer gives their express consent to resume data access. These customers are automatically protected from bill shock and there is no need to make special arrangements for them. This meets the policy intention behind the Article, because consumers are unable to spend more than they have consented to before starting the connection, giving control. This exception does not apply to any data tariffs that are part fixed and part variable or that recur automatically in price and/or duration, for example a fixed sum for initial period and a variable rate thereafter, or a daily tariff that recurs until the customer withdraws their consent; A cut-off limit must be available for such tariffs.

24) ERG understands that ~~a~~monthly billing period~~q~~may refer to a calendar month or another specified monthly period. In particular, in the case of pre-pay tariffs, for which there is no monthly billing period, ERG considers it should be understood as a period of one month (calendar or starting from the latest top-up).

25) In addition, providers may make available one or more other, higher or lower, financial or volume limits for other specified periods of use (i.e. not necessarily per month); again providing the customer is made aware in advance of the corresponding volume or financial amount, respectively.

26) ERG notes that, for the purposes of Article 6a(3), the volume of data consumed by fixed price MMS sent or received cannot be counted towards an agreed volume limit. That is because the MMS may comprise any volume of data for a given price. ERG considers that the charges for fixed price MMS are generally comparatively low and a fixed price per MMS is relatively understandable for consumers, similar to SMS, so that protection from ~~bill shock~~in the form of a volume limit is not essential to meet the policy intention. Providers must make clear to consumers that fixed price MMS will not be counted towards the agreed volume limit.

27) Nonetheless, fixed price MMS can and should be counted towards an agreed financial limit. Additionally, providers should count towards an agreed financial or volume limit any MMS that are subject to a fully or partly variable charge according to volume. That will help consumers to monitor and control their expenditure on this service.

28) When a financial or volume limit is in operation, the Regulation requires providers to send the customer a warning when they have consumed 80% of that limit. The

overall policy aim of the limit is to enable customers to monitor and control their expenditure. ERG understands that the type of handset or other device, data service, and content can all affect the speed with which the notification can be sent, and with which it can be received and acted upon by the customer. For example, accessing audiovisual content will generally cause 80% of the limit, and the limit itself, to be reached much more quickly than reading e-mails. So that the customer has time to use the notification to make an informed decision about their expenditure before the final limit is reached, ERG considers that providers should set up the sending of notifications in a way that will enable the customer to receive the notification when they are as close to 80% of their limit as is technically feasible and as is in the customer's best interests. Where there is variation from 80%, providers should seek as a matter of good practice to ensure that the customer receives the message before they reach 80% of their limit rather than after.

29) Although the Regulation does not prescribe how the warning has to be sent to the customer's handset or other device, it must be 'appropriate' – for example by an SMS message, an e-mail or a pop-up window on the computer'. ERG considers that providers should choose the means that will maximise the customer's chances of receiving and being able to act upon the notification bearing in mind the device and type of data service used.

30) ERG expects providers will wish to provide customer information on how to continue using data services when the 80% limit is reached in this warning notification, in order to give consumers more time to plan and control their use and expenditure.

31) Customers can require their provider to stop sending such notifications, and to start again, free of charge.

32) When the agreed financial or volume limit is reached, the provider is required to send another notification to the customer's mobile handset or other device. The notification must indicate how to continue using data services, if the customer wants to, and the cost of any additional data units consumed. If the customer does not respond as indicated, the provider must immediately 'cease to provide and to charge the roaming customer for regulated data roaming services, unless and until the customer requests the continued or renewed provision of those services'. This includes any MMS that are subject to a variable tariff. Providers may continue to provide and to charge for fixed rate MMS, in the same way as voice and SMS roaming services.

33) Some providers have expressed concern that this provision requires them to de-authorise all data roaming services for the customer concerned. The customer would then be required to contact customer services to request re-authorisation of data roaming, which could take a short or a significant amount of time to process. All data in the process of being downloaded or uploaded when the limit was reached would be lost. ERG considers that the policy intention is not for data roaming services to be de-authorised or for consumers to have to enter into a burdensome or lengthy process to resume data roaming use.

34) ERG considers that all charging should cease when the limit is reached. Regarding the data connection, ERG recommends that the provider should where possible suspend this for a reasonable period after the limit is reached, to give most customers adequate time to receive and respond to the notification. Depending on the type of device, data service and content, there may be a delay, especially where the means of sending the notification does not interrupt the data session itself, for



example where an SMS is sent to a mobile handset, as opposed to a pop-up. If the customer indicates that he or she does not want to continue the data session or remains silent throughout the reasonable period for a response, ERG considers that operators should endeavour to facilitate any subsequent connection to the greatest extent possible, once the customer gives their consent to resume use. ERG also expects that providers will make reasonable technically feasible efforts to preserve any data that was in the course of being downloaded when the limit was reached, so as to allow the customer to resume the download.

35) By 1 March 2010, providers must also allow their customers to opt for a facility that provides information on their accumulated consumption expressed in volume or in the currency in which they are billed.

36) Lastly, Recital 36 says that the above measures should be seen as a minimum safeguards for roaming customers and do not prevent providers from offering additional transparency and bill control measures like flat-rate offers or real-time information on data consumption, which ERG also encourages.

### ***Wholesale issues***

#### **Wholesale voice and data roaming caps**

37) The caps on wholesale voice and data charges apply to the average charges levied by any one network operator on any other. Charges may differ by time of day and at different times of the year and must be compliant when assessed on a one-year basis.

38) This maximum is an average charge to be calculated over the period of application of the cap. This is usually a 12-month period, but may be a shorter period depending on how long remains before a new cap enters into force or the Regulation expires. In particular, the wholesale cap set on 30 August 2008 must be calculated over a 10 month period as the new cap under the amended Regulation is due to enter into force on 1 July 2009.

39) The necessary adjustments should therefore be made to existing wholesale rates to ensure that the average price cap is met by the end of the relevant period. Network operators should enter into early bilateral negotiations in good faith with a view to adjusting the contractual pricing provisions as soon as possible. The result of such negotiations should provide assurance on both sides that the limits in the Regulation will be respected over the applicable compliance period. ERG believes that 6 months after the Regulation came into effect should be a sufficient timeframe for such negotiations, which should therefore be complete by the end of 2009. One method of achieving this would be for a provider to implement a unilateral price cut so that charges levied after 1 July are transparently consistent with the Regulation.

40) Maintaining wholesale charges at their existing level throughout 2009 and much of early 2010, with the intention of making a reduction at a later stage to bring the annual average charge into line with the Regulation, could have a significant adverse effect on cash flow of other operators, given the need to make immediate reductions in retail voice tariffs from Summer 2009, and prevent other operators from offering more competitive or innovative tariffs to consumers. In the absence of explicit bilateral agreement between the parties, ERG therefore considers this to be an unacceptable commercial practice, notwithstanding that it is not explicitly prohibited by the Regulation.



Example: Provider A maintains existing charges to Provider B until January 2010. In the absence of explicit agreement between the providers, the rates charged by A for February to June 2010 would need to take account of the above-cap rates in the first 6 months. If, for example, the rate charged for the first 6 months were double the regulated maximum, the maximum permissible rate for the second 6 months would be close to zero (after taking due account of pricing elasticity).

41) Where it becomes clear to a provider that overcharging of a wholesale customer over the entire compliance period is likely, on the basis of expected traffic patterns, immediate remedial action should be taken.

### **Maximum charging intervals**

42) The Regulation provides for a maximum charging interval for regulated wholesale and retail voice roaming calls and wholesale data sessions.

### **Retail voice calls**

43) Regulated roaming retail voice calls made and received must be charged on a per second basis. An exception is provided for calls made pursuant to Article 4(2), which allows operators to extend the initial charging period up to a maximum of 30 seconds. This is intended to enable providers to recover any reasonable set-up charges and to compete by offering shorter initial charging periods. The initial charging period of maximum 30 seconds does not apply to calls received, i.e. they must be charged per second only. That is because any set-up costs are considered to be covered by mobile termination rates.

44) The Regulation does not prescribe a minimum or maximum charging interval for other roaming retail voice calls made or received.

### **Wholesale voice calls**

45) Article 3 (3) states:

*ō with effect from 1 July 2009, the average wholesale charge referred to in paragraph 1 shall be calculated by dividing the total wholesale roaming revenue received by the total number of wholesale roaming minutes actually utilised for the provision of wholesale roaming calls within the Community by the relevant operator over the relevant period, aggregated on a per second basis **adjusted to take account of the possibility for the operator of the visited network to apply an initial minimum charging period not exceeding 30 seconds.***  
(emphasis added)

46) This means that at the wholesale level operators must also bill on a per second basis, subject to a minimum initial charging interval of up to 30 seconds.

### **SMS**

47) SMS must be billed per message at the wholesale and retail levels. A message is up to 160 characters.

## Data

48) The Regulation provides that wholesale data roaming services must be charged on a per kilobyte basis (Article 6a(4)). According to the Regulation, providers may round up the volume of a given session to the nearest kilobyte. In particular, this means that a data session of less than one kilobyte may be charged as a one kilobyte session.

49) For clarity, ERG considers that:

1 kilobyte = 1024 byte = 8192 bit

1 megabyte = 1024 kilobyte.

## General issues

### Charges for voicemail messages

50) Article 4(2) prohibits charges for voicemail messages that are deposited in the roaming customer's network mailbox by another caller.

51) The home operator is not prevented from levying other applicable voicemail charges for example when the roaming customer listens to a message left in their network mailbox. The transfer to the roaming customer's network mailbox of any voicemail messages that have been left in that customer's non-network mailbox, for example if the customer uses personal numbering, should be considered as a different service to the one described in Article 4(2).

### Charges in currencies other than the Euro

52) For SMS and data, the relevant exchange rate for regulated charges in currencies other than the Euro for the first 12 months is the one published in the Official Journal of the European Union (OJEU) on 6 May 2009. For voice, the relevant exchange rate for regulated charges in currencies other than the Euro for the first 12 months is the one published in the Official Journal of the European Union (OJEU) on 1 June 2009. For following years, the relevant exchange rate for all regulated roaming charges is the one published in the OJEU on 1 June.

53) The maximum retail caps for the Eurotariff and the Euro-SMS and the wholesale average caps for voice, SMS and data should be calculated to the maximum number of decimal places permitted by the official exchange rate. This sets the maximum that can be charged in the national currency. Providers may wish in practice to quote charges in whole numbers of currency units, especially at the retail level, although this in practice is not compulsory. In this case, the numbers should be rounded down. Rounding up of these numbers to above the level of the relevant cap is not permitted under any circumstances.

### Scope of regulated roaming call

54) For the purposes of Articles 3, 4 and 6 of the Regulation, a "regulated roaming call" comprises only voice calls and does not include FAX or data calls (e.g. using VoIP over a mobile Internet connection).

## Scope of regulated data roaming services

55) Regulation (EC) No XXX/2009 extends the scope of the initial regulation to *data roaming services*. The definition of such a service is provided in Article 2.2(k):

*'regulated data roaming service' means a roaming service enabling the transmission or receipt of packet switched data communications by a roaming customer by means of his mobile telephone or other mobile device while it is connected to a visited network. A regulated data roaming service does not include the transmission or receipt of regulated roaming calls or SMS messages, but does include the transmission and receipt of Multimedia Messaging Service (MMS) messages.*

56) From the examples provided for in Recital 34a, it is clear that applications like *email, pictures or web-browsing* should be considered as data roaming applications. Therefore, the transmission and receipt of such data should be covered as *regulated data roaming services* when they are provided to a roaming customer on a visited network. ERG also considers VoIP calls over a mobile network should be considered a regulated data roaming service.

57) ERG wishes to point out that this definition is technology-neutral in that it applies irrespective of the radio spectrum used (2G, 3G...). Nevertheless, regulated data roaming services should not include services provided through a WiFi connection, as a WiFi network is not a *mobile network*. According to the above definition, the regulation applies when a roaming customer is connected to a visited *terrestrial public mobile network*. Recital 33 also makes a distinction between roaming services and WiFi, as the latter might be *a substitute for, or alternative to, roaming services*.

## Value-added services

58) ERG considers that a value-added service is a premium rate service (PRS) where the charge for the voice call or SMS or data transmission is bundled with the price of a specific service, and that bundled price is fully billed by and paid to the roaming customer's home provider.

59) In relation to the price regulation of voice roaming services, Recital 19 of the first Roaming Regulation (EC) No 717/2007 states: *'This regulatory approach should not apply to value added services.'* The amended Regulation makes that exemption in relation to value added SMS services only (Recital 26). However, ERG understands the policy intention is for the exemption to continue to apply to regulated voice roaming services under the amended Regulation.

60) The Regulation provides no explicit exclusion for value-added data services but in any case, since there is no retail price regulation of data roaming services, the considerations are different. Where the content or premium service is billed and paid separately to a third party provider, this does not meet the ERG's definition of a value added data service and only the price or volume of the data transmission itself should be counted towards the financial or volume limit. ERG considers that consumers are likely to see only the data transmission element as a *mobile service*, because that is all they buy and receive from the mobile provider. ERG believes that this will be the most common arrangement.

61) However, where the customer pays a bundled price to the mobile service provider, covering both transmission and the premium service, an allowance needs to be counted against the customer's cut-off limit. This applies both to MMS and data

downloads. ERG considers that the most straightforward approach, and the one most likely to conform to customer expectations, is for the full price or volume to be counted towards the financial or volume limit. Depending on the characteristics of the agreement, this could include revenue-sharing agreements between a mobile provider and a content provider. ERG considers that consumers are likely to see this primarily as a mobile service, given that they pay only their mobile provider in a single transaction.

### **Roaming calls made to/from ships or planes**

62) The Regulation does not apply to calls made to/from ships or planes using satellite networks.

### **Machine to machine communications**

63) ERG understands that some companies, for example utility companies, may have mobile SIM cards installed in their equipment to send automatically generated data to another piece of equipment ('machine to machine communications'), for example SIMs may be used in goods lorries to send automatic location data back to a control centre. Some companies may also use SIM cards in specific devices that allow employees to have access remotely to specific software, for instance for on- and off-site data collection, but such devices do not offer access to voice, SMS or standard data communications. In some cases, the SIM will be roaming in another Member State. ERG considers that the Roaming Regulation applies to those communications, but notes that contracting companies may choose to opt-out of the Regulation's provisions if they consider them irrelevant or unnecessary (e.g. the limit of data expenditure), and may do so in the initial contract to provide the communications service, for example.

### **Geographical scope of the Regulation**

64) The Regulation applies to calls made and received within the EU. ERG is aware that GSM Europe has prepared a table outlining its understanding of the inclusion/exclusion of various offshore territories of the EU, including the Outermost Regions defined in Article 299 of the Treaty. ERG has reviewed this table and has no comments on it. However, it should be noted that Article 299 of the EU Treaty sets out the definitive position; market players are strongly advised to consult the EU Treaty in this regard.

### **Application in EEA Member States**

65) The scope of the amended Roaming Regulation is expected to be extended to the European Economic Area (EEA) Member States (Norway, Iceland and Liechtenstein), pursuant to the EU/EEA Agreement. Until it enters into force in those countries the first Roaming Regulation (EC) No 717/2007 will continue to apply, including the wholesale and retail voice caps, the dates for revising those caps and the transparency measures set out in that Regulation.

66) Further information on application of the Roaming Regulation in EEA Member States is available from the EFTA Secretariat website at <http://secretariat.efta.int/>