

<p><b>mobilkom austria group response to the draft European Regulators Group Guidelines on the Roaming Regulation</b></p>
---

mobilkom austria group welcomes the opportunity to comment on the European Regulators Group (ERG) revised draft of its Guidelines on the Roaming Regulation.

In general, we believe that the definitive version of the Guidelines should take utmost account of the provisions of the Regulation. However, we deem it necessary that any recommendations should consider the technical feasibility of the tools and measures proposed as well as the practical issues related to their implementation. Further, we believe that any recommendations should take into account the needs of consumers as well as the technical development achieved by the industry without creating unnecessary administrative and technical burden for operators and consumers. What appear to be simple requirements in the regulation can be extremely complex for operators to implement and can involve degrading the customer experience significantly.

The following comments represent some initial views from mobilkom austria group on the aspects of implementation that should be incorporated in the guideline document.

- mobilkom austria group agrees with the understanding of the ERG that the provisions in Article 6a(2) requires only one notification on the applicable data tariffs to be sent to the customer namely when both conditions of the provision are met (entry into another Member State plus initiation of a data roaming service). Therefore, it is not clear why the ERG interprets the requirement to the contrary by proposing two or more notifications to the customer to be made in recital 13. This approach would lead to unnecessary spam for the affected customer. In order to provide enough protection for the customer while avoiding the unnecessary spam mobilkom austria group suggests that one message should be sent when crossing the border delivering information as required under Article 6 and one message after crossing the border plus initiating a regulated data roaming service as required under Article 6a.
- According to Article 6a(3) of the Regulation each home provider shall give to all their roaming customers the opportunity to opt deliberately for a facility which provides information on the accumulated consumption expressed in volume or in the currency in which the roaming customer is billed for regulated data roaming services. In recital 19 of the Guidelines the ERG claims to understand the "customer" to be the contracting party, so that a single limit would apply to all of the SIMs within a family contract. mobilkom austria group believes that the understanding of the ERG contradicts all the other provisions of the Regulation which clearly assume that each separate user (of a separate SIM card) using roaming services should be subject to individual treatment as regards his quality of a roamer. Any other understanding would be detrimental to the customer experience. As customers with multiple SIMs can either be families but are more likely companies applying one limit for all the SIMs in the contract would basically disable corporate customers from using data roaming services. Therefore, mobilkom austria group suggests that different users within a family contract should have the possibility to opt for different limits according to the individual preferences and needs.

- Another issue of concern is the application of data roaming limits to prepay customers. The ERG proposes that the financial or volume limits will not only apply to post-pay customers but also in exactly the same way to prepay customers. mobilkom austria group's understanding of the intention of the Regulation as regards to the introduction of such limits is to protect the customer from Bill Shock. Which is exactly the main feature of prepay services as customers can always choose the limit they want to spend from the top ups available with a guarantee that they will not exceed their chosen limit. Accordingly, a prepay customer will never experience Bill Shock as he can not spend more than he has deliberately chosen to pay. Moreover, to implement a technical system offering prepay customers the possibility to set an additional limit would involve significant costs for a very small number of customers as usually the percentage of prepay usage compared to the overall data roaming traffic is rather marginal [Business secret]. Furthermore, the Regulation refers to the "monthly billing period" which strongly suggests that the political intention of the Regulation was to include postpaid customers only as these are the only customers who might experience Bill Shock as many operators do not have an automatic cut-off mechanism implemented if a customer exceeds a certain spending limit. Accordingly, mobilkom austria group suggests to remove the explicit inclusion of prepay customers as regards data roaming usage limits from the Guidelines.
- The ERG differentiates between the treatment of fixed price MMS when counted towards volume limit (where the ERG allows exclusion from the counting) and the treatment of fixed price MMS when counted towards financial limit (where the ERG does not allow exclusion from the counting). It should be noted that volume limit is allowed only to the extent that it corresponds to a financial amount not exceeding 50 EUR of outstanding charges per monthly billing period. This practically makes the distinction between the financial and the volume limit quite vague. Therefore, there is a certain contradiction between the provisions of recital 26 and recital 27. mobilkom austria group believes that the treatment in both cases should be the same, i.e. fixed price MMS should not be counted towards any limit (financial or volume) as the charges for fixed price MMS are understandable for consumers as ERG notes itself. There are no justifiable reasons to apply different measures as regards different types of limits as the results are practically the same.
- The ERG expects providers to make efforts to preserve any data that was in the course of being downloaded when the usage limit of a customer was reached in order to allow the customer to resume the download once he agrees to continue to use data roaming services. Although mobilkom austria group understands the intention of the ERG to maximise customer experience it is for operators impossible to preserve data. Whenever an operator ceases to provide the service the connection will be cut off and data which is not completely received will be lost. There simply is no technology available that would allow the provider to preserve the data as it is saved on the user's equipment and not on the providers network. Moreover, it is questionable if such an action would be in line with privacy protection policies. However, as there are various download managers available which will resume downloading data which was not received before a connection was broken customers have already tools available to protect themselves from broken connections which makes additional obligations for providers redundant. Accordingly, mobilkom austria group proposes to remove any reference on efforts of operators to prevent data losses from the Guidelines.

- As mentioned in the introduction the ERG should take utmost account of the provisions of the Regulation but should not go beyond the scope of the Regulation. As the Regulation does not explicitly provide for a facility that provides information to customers on their accumulated consumption but only provides for the obligatory introduction of one or more usage limits paragraph 35 of the Guidelines should be removed.
- According to recital 47 of the Guidelines SMS is up to 160 characters. Short messages can be encoded using a variety of alphabets: the default GSM 7-bit alphabet, the 8-bit data alphabet, and the 16-bit UTF-16/UCS-2 alphabet. Depending on which alphabet the subscriber has configured in the handset, this leads to the maximum individual Short Message sizes of 160 7-bit characters, 140 8-bit characters, or 70 16-bit characters (including spaces). Cyrillic alphabet for example corresponds to 70 16-bit characters (including spaces). mobilkom austria group believes it to be necessary to clarify this issue so that further disputes on the number of characters included in one message can be avoided.