

**Official position of the Ministry of Infrastructure of Poland
on the draft ERG Guidelines regarding the application of 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.**

Polish Ministry of Infrastructure welcomes the Public Consultation on the European Regulatory Group (ERG) on the Draft Roaming Guidelines regarding the application of the new roaming regulation. Adopting and using Roaming Guidelines by all interested parties in a coherent and harmonized way will extend clarity and help to avoid interpretation doubts. In the following opinion the Ministry of Infrastructure would like to draw attention to some key issues:

1. Transparency obligations

The Regulation imposes on mobile operators the obligation to inform their clients about the prices for roaming services when they enter a Member State other than that of their home network. Commission's and Council's intention in the Regulation was to inform users in detail about the call prices as well as counteract random roaming. However, receiving too many messages while crossing the boarder may bring results which are contrary to the intended ones.

For this reason operators should send their clients as many messages as it is necessary in order to pass the information required by the Regulation only. According to our information many mobile operators after numerous users' claims limited welcome messages in order to reduce this excessive burden for users.

Referring to transparency obligations in data transmisson the Ministry of Infrastructure agrees with the assumptions of the Guidelines that the number of received messages should depend on the technical characteristics of a given device.

2. Regulated roaming data transmission

The Ministry of Infrastructure is on the position that the concept of excluding fixed-rate MMS messages from the volume cut-off limit is not appropriate. MMS message is practically a

telecommunication service consisting in data transmission, and MMS as data transmission should be included in the volume cut-off limit chosen by user.

Furthermore, in the Ministry opinion there should be no differences made between post-pay and pre-pay customers as far as cut-off limits is concerned. During a few month preparation of the Regulation, which the Ministry took part in, it was clear that all users would be covered with the financial limits, no matter what kind of calculation they would choose (post-pay or pre-pay).

It is also a crucial issue that the operators should inform customers on their websites or in other literature on the possibility of losing the downloaded data in case the limit specified earlier was exhausted and the download has not finished. In many situations downloaded data are lost half way and it is necessary to start downloading again. This can cause users dissatisfaction and expose them to needless costs.

3. Value-added roaming data services

In the opinion of the Ministry of Infrastructure the provisions of roaming regulation give no basis for interpretation that prices for content should be separated from prices for transfer. These roaming services should be treated inseparable and total price (data transmission cost as well as cost for content) should be included to financial limit.

The following argumentation confirms that different action than mentioned above would be inconsistent with legislator's intention as well as of the roaming regulation itself. In such case national regulatory authorities would be entitled to impose penalties, according to the article 9 of Regulation.