

NON-CONFIDENTIAL VERSION

Vodafone comments on draft ERG Guidelines on the International Roaming Regulation

Vodafone welcomes the ERG's efforts to provide operators and national regulators with guidance as to how the provisions of the new Roaming Regulation are to be understood. It is already clear that some of the provisions within the new Regulation – in particular those in Article 6a – will prove significantly more complex and challenging to implement than those contained in the original Roaming Regulation.

All Vodafone companies in Europe are working hard towards implementation of these provisions in a way which ensures the best possible experience for our customers.

Our comments are confined to the small number of cases where we either propose amendment or reconsideration in the draft guidelines, or where we have comments which might otherwise inform the ERG's thinking. We follow the paragraphs in the ERG draft:

Para 13:

Whilst it is helpful to distinguish between different usage cases by reference to the device being used, as the ERG does, we think other considerations are also relevant.

We agree with the ERG that sending a message on crossing the border should be the default requirement in all cases for the reasons outlined in paragraph 12. We also agree that for laptops and many data devices (such as Blackberrys and PDAs), the connection to the visited network and the initiation of a data service will occur at the same time and that, in these circumstances, a single message will fulfil both requirements.

This leaves a relatively small group of infrequent data users with traditional mobile handsets who may initiate a data session some time after they have switched on their handset for voice usage. These users are generally 'snacking': engaging in very short duration data sessions to access information services or similar applications which incur relatively small charges. They will already have received an earlier SMS which they will either have read and deleted or which they will still have stored unread on their handset. In these circumstances, a proportionate response (which takes appropriate account of the risks) might not always involve the sending of another message. It could, for example, involve drawing the customers' attention to the information which they have already received and which is already stored on their handset. The ERG guidelines should not exclude such solutions.

Para 17:

We expect that PDAs and handsets will increasingly be able to synchronise and update themselves whenever they are switched on. This greatly enhances the user experience for some applications. However, Vodafone understands that the data consumed by such activities is typically hundreds of kilobytes rather than megabytes. On most Vodafone flat rate data roaming tariffs such usage will fall easily within the unused monthly allowance and therefore has an effective marginal cost of zero.

Vodafone accepts that customers will nonetheless need to consent to these activities if they lead to additional roaming charges. Obtaining such consents may be complex, since customers

may not actually acquire the device from the network operator. This is an area to which Vodafone is currently giving more thought.

Para 22:

Vodafone recognises that customers with monthly prepay balances exceeding €50 should be afforded the protection of the €50 limit. However, we believe this group is small. Although the position differs significantly between Member States and we have only an initial view at this stage, we have found no market in which more than []% of our prepay users exceed €50 a month for all usage and fewer than []%% of all prepay users are likely to have roamed and to have spent anything close to the €50 limit.

Nonetheless, we do not understand the ERG's statement that limiting pre-pay credit to €50 is 'not a means of complying with Article 6a(3)'. [] we cannot see any reason why this would not be compliant with the Regulation and we therefore think that this statement needs to be deleted.

Para 34:

Vodafone understands the ERG's concern that existing sessions are not terminated and data is not lost when the limit is reached. Our current view is that the retention of data in such circumstances would require a fundamental reengineering of the software on customer devices rather than being something which the network operator could address directly.

Para 35:

This is the one area of the guidelines where we disagree with the ERG. We do not think that a proper reading of Article 6a (3) requires providers to offer a facility *in addition to* the €50 financial limit (although we accept that operators are free to do so). The second paragraph of Article 6a(3) begins 'to this end', which indicates to us that the '€50 facility' is the minimum necessary (but also sufficient) to fulfil the requirements of the first paragraph.

We would ask that the text of this paragraph is amended accordingly.

Para 61:

We understand that this issue has already been discussed at some length between the ERG and GSMA. Vodafone agrees that a distinction needs to be drawn between content and other value added services and the roaming transmission service.

However, Vodafone believes that a better distinction involves recognising that content and value added services may *either* be invoiced by and paid separately to a third party provider (as recognised in para 6) *or* itemised separately (from transmission) but nonetheless invoiced by and paid to the mobile provider. For these purposes, the price of content and value added services (but not the transmission) must not vary by reference to whether they are consumed whilst connected to the home network or the visited network.

Vodafone suggests that paragraph 61 is amended to reflect this distinction, which we believe better reflects the intent of the lawmakers (and the ERG).

