

BEREC Opinion on the proposal of the Commission for amending the Roaming Regulation

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Contents

1. Introduction	2
2. Analysis of the legislative proposal.....	2
2.1. Quality of Service Requirements	2
2.2. Value-added services	3
2.3. Emergency Services.....	4
2.4. Wholesale caps	5
2.5. NRAs' and BEREC's monitoring.....	7
2.6. Repeal of the obligation for the separate sale	7
3. Additional measures proposed by BEREC.....	8

1. Introduction

On 24 February 2021 the European Commission (EC) published a proposal of a recast for a Regulation of the European Parliament and of the Council on roaming on public mobile communications networks within the Union,¹ as the current applicable Regulation (EU) No 531/2012 expires on 30 June 2022. The aim of the proposal is to extend the Regulation, adjust the maximum wholesale charges and introduce new measures that are intended to ensure a similar roaming experience as at home with regard to quality of service, to increase transparency for value added services and to ensure cost free access to emergency services for roaming subscribers.

BEREC provided its Opinion and input to the European Commission in 2019 and 2020 in which it analysed the benefits of the Roaming Regulation as well as the functioning of the retail and the wholesale roaming market and made suggestions for the future regulation. Against this background, BEREC analysed the Commission's proposal and provides its expert opinion on the impact of the proposed measures.

2. Analysis of the legislative proposal

BEREC in general welcomes the recast and the measures proposed by the Commission, as many of them were also proposed by BEREC in its opinion 2019 and 2020. BEREC has analysed the new proposals and makes the following notes in the next subsections dedicated per topic.

2.1. Quality of Service Requirements

BEREC agrees with the EC that the regulation intends to ensure a genuine 'roam-like-at-home' experience in terms of quality of service. This experience should be supported by granting access to all technologies at wholesale level when technically feasible, so as to allow roaming customers to use regulated roaming services like at home. At the same time, the roaming provider has to grant the same quality of service to its roaming customers as when at home – when technically feasible.

BEREC appreciates the new provisions regarding Quality of Service and is ready to work on Guidelines for wholesale roaming access. Regarding the provisions on the retail level, BEREC agrees that such provisions are to the benefit of the customers, however asks the legislators for more clarity. For example, BEREC would appreciate, if the recitals included more details about the need for wholesale agreements to contain the technologies for offering the same QoS like at home for all visited networks the operators wish to contract in a specific country. In addition, it seems unclear, whether operators need to establish VoLTE roaming agreements so that customers can enjoy the same voice quality as when at home, taking also into account

¹ <https://ec.europa.eu/digital-single-market/en/news/proposal-regulation-european-parliament-and-council-roaming-public-mobile-communications>

that a VoLTE roaming architecture may imply that voice signalling and media is sent to the home network. This may have relevant implications for the execution of lawful interception. Furthermore, guidance on the parameters for QoS that should be considered by the domestic and the visited operators (e.g. no restrictions from domestic operators, best effort principle, no restrictions on interconnection capacity etc.) would be appreciated.

Operators also need to inform customers, including in the contracts, about the (available) QoS. BEREC again, is of the opinion that more guidance in the Recitals could be given to the operators on the type of information they would have to provide (e.g. per country, per contracted operator, available access technologies, information on transfer rates of visited operator, explanation of the levels of quality of service provided in roaming etc.).

As mentioned, BEREC considers that more guidance on the QoS obligations could be included in the Recitals of the Regulation. Further details do not necessarily have to be included in the regulation itself, but could also be done via other means. BEREC would be ready to provide Guidelines about retail QoS obligations in case legislators deem it necessary which would include a consideration of the practicalities of implementing the proposed QoS measures and relevant factors possibly impacting consumer expectations of QoS when roaming.

2.2. Value-added services

BEREC welcomes that from the entry into force of the regulation on 1 July 2022 operators have to inform customers about possible increased charges due to the use of VAS, by means of a Message Service when the roaming customer enters a Member State other than that of his/her domestic provider. In addition, BEREC is of the opinion that the scope of the services to be considered should be made clearer in the regulation, at least in the recitals, by indicating that VAS are those types of services that risk to be subject to increased retail charges and/or wholesale costs when roaming, since they are not mandatorily subject to RLAH rules and/or wholesale caps. The warning message on the existence of services that risk to be subject to increased retail charges should include a link to a dedicated webpage providing information about the types of services that may be subject to increased costs and, if available, information on value-added services number ranges. The intention of this obligation is to reduce the risk of bill-shocks. To what extent the risk can be mitigated will depend on how targeted, specific and clear the information is (e.g. how specific and objective should the description of types of services be, ideally referencing the numbering ranges associated to them, when available). Moreover, as there are no provisions on whether the access to the webpage can be charged by the operator, BEREC proposes that the Regulation should include that this should be free of charge - as is the case for the Welcome SMS.

In addition, the proposed Regulation includes an obligation for roaming providers to ensure that any contract including regulated retail roaming services provides information about the types of services that may be subject to increased charges when roaming, and that this information should also be published. BEREC is of the opinion that corresponding to the minimum information, more guidance should be given to the operators on these retail transparency measures.

BEREC described various categories of VAS in its input to the EC in June 2020. In this context, BEREC would also welcome additional provisions (both at wholesale and retail level) that would provide scope to ensure the usually domestic free provision of harmonised types of Value Added Services in particular for services with social value (esp. 116 117) and “Freephone numbers (0800 and 00800)”, enhancing the “genuine” RLAH experience. At least, if calls to such numbers - as is usual for domestic use – cannot, due to additional wholesale costs, be provided for free while roaming or are alternatively deducted from the tariff plan/bundle of customers, this should be very clearly communicated by the roaming providers to end users.

On the wholesale level, the transparency of VAS is intended to be increased via a database that BEREC has to establish. This database is supposed to be available by the end of 2023.

BEREC requests the EC to clarify the relationship between the dedicated webpage providing information about the types of services and number ranges that may be subject to increased costs from entry into force on 1 July 2022 and the database to be created by BEREC until 31 December 2023. Operators might have difficulties in informing accurately their customers on the types of services and/or numbering ranges subject to additional costs while they themselves do not have access to the information of the database. BEREC would try its best to finalize the work on the database earlier than required. However, operators are likely to have implemented transparency measures by the time the database comes into effect, as those are designed to be mandatory.

2.3. Emergency Services

The proposed regulation includes provisions both at wholesale and retail level for accessing emergency services. Although BEREC has not identified particular issues on the provision of such services to roaming users, it welcomes this initiative as it recognizes the importance of uninterrupted, effective and free-of-charge access to emergency communications.

The proposed regulation requires operators to include in their reference offer all information necessary to enable the roaming provider to ensure that its customers have free-of-charge access to emergency services through emergency communications to the most appropriate Public Safety Answering Point (PSAP) and the transmission, free of charge, of caller location information to the most appropriate PSAP when roaming. In addition, wholesale operators are not allowed to apply any wholesale charges for emergency communications including the transmission of caller location information.

At the retail level, roaming providers must ensure that their roaming customers are kept adequately informed on the means of access to emergency services in the visited Member State. This will be achieved via an automatic SMS message every time the roaming customer enters a Member State other than that of his domestic provider. It shall be provided at the moment the roaming customer initiates a roaming service. BEREC considers that more details on the frequency of receiving such information are needed as one might conclude that the information should be re-sent every time a user uses his/her phone abroad. In addition, it should be clarified whether these provisions also cover emergency numbers other than 112

national emergency numbers (as referred in Article 109 (6) of EEC). BEREC considers that there would be technical implications, if there were such a requirement.

BEREC suggests a central information point (e.g. official website) that provides the relevant information on all emergency communications in each MS and to which roaming providers can link. The “Monitoring of the implementation of emergency communications and 112” carried out by the EC, could serve as a well-suited starting point. Valuable complementary information is expected to be available on the basis of the "Study on Technical Solutions to Ensure Compatibility, Interoperability, Quality, Reliability and Continuity of Emergency Communications in the Union"².

Finally, it should be examined whether the wholesale consumption for data particularly used for accessing alternative means of access to emergency services can be identified and excluded from the relevant wholesale billing. BEREC wonders whether such an obligation would entail costly technical implementations.

2.4. Wholesale caps

BEREC analysed the proposed caps taking also into account the results of the Axon cost model.^{3,4} Figure 1 shows the results of the cost model (minimum and maximum costs⁵) compared to the price caps proposed for the new regulation up to 2025. As mentioned in BEREC’s supplementary analysis on wholesale roaming costs⁶, Axon incorporated a number of alternatives for a series of parameters/methodological approaches in the model and published the output for all possible combinations of parameters/ methodological approaches so as to provide decision makers with a range of unit costs for each modelled service (72 scenarios for each service/country – 1944 cost estimates in total for each service). According to the documentation of the model, there is one scenario that combines the 8 parameters of the model that is used by the EC for illustrative purposes. This scenario is the stakeholders’⁷ preferred option for each of the 8 parameters defined and it does not necessarily reflect the EC’s preferences nor does it necessarily represent the combination of scenarios that reconciles the best with MNOs’ financial and operational realities. Figure 1, apart from the minimum and the maximum cost estimates for all scenarios/countries, includes also the maximum and the minimum cost estimate of the stakeholders’ preferred option.

² <https://ec.europa.eu/digital-single-market/en/news/procurement-launched-study-technical-solutions-emergency-communications-union>

³ <https://ec.europa.eu/digital-single-market/en/news/finalisation-mobile-cost-model-roaming-and-delegated-act-single-eu-wide-mobile-voice-call>

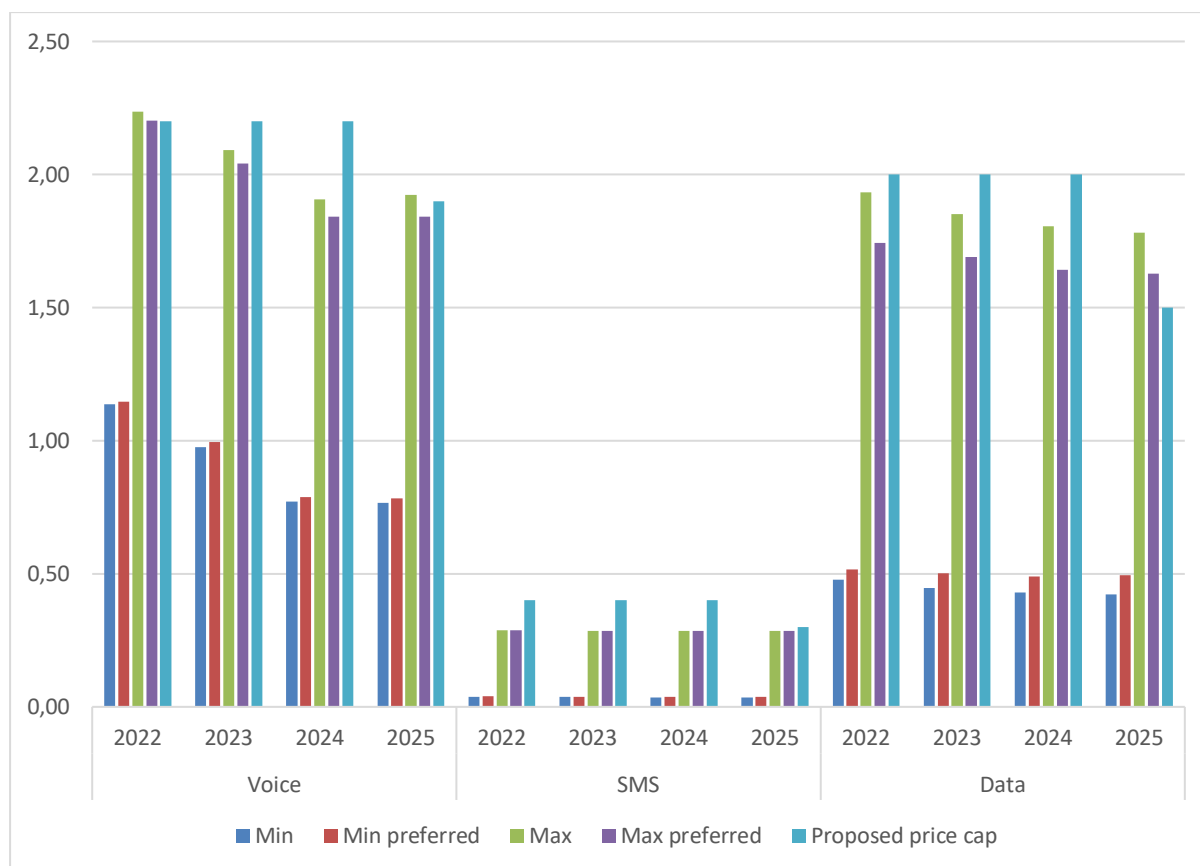
⁴ BEREC would like to refer to the limitations of the Axon Cost Model, as also mentioned in the introductory section of the 2019 BEREC supplementary analysis. In addition, in its supplementary analysis BEREC noted that there is some uncertainty regarding the wholesale costs for the last period of the estimates in the cost model, as the Axon cost model has not modelled costs for 5G.

⁵ Transit cost estimates as well as termination rates are also taken into account. For the case of termination rates the latest information from the draft delegated act is incorporated.

⁶ https://berec.europa.eu/eng/document_register/subject_matter/berec/opinions/8756-berec-supplementary-analysis-on-wholesale-roaming-costs

⁷ It refers to stakeholders participated in Axon’s cost study consultations

Figure 1: Comparison between proposed wholesale caps and cost estimates



Furthermore, BEREC analysed how many of the results for the different scenarios and countries are below the proposed caps. The conclusion of this analysis is shown in Table 1. For almost all years up to 2025, the proposed caps cover the unit costs for all the modelled scenarios and all the modelled countries.

Table 1: Analysis of results of wholesale cost estimates from the Axon cost model

Service/Year	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>
<u>Voice</u>	99,4% ⁸	100,0%	100,0%	99,7% ⁹
<u>SMS</u>	100,0%	100,0%	100,0%	100,0%
<u>Data</u>	100,0%	100,0%	100,0%	97,4% ¹⁰

⁸ 11 out of 1944 cost estimates

⁹ 6 out of 1944 cost estimates

¹⁰ 50 out of 1944 cost estimates

BEREC notes that there are some discussions regarding the uncertainty about the costs of 5G. Indeed, 5G was not incorporated in the Axon model, as at the time it was built, operators, although requested, were not able to provide data. This however might only create some ambiguity about the level of unit costs for the years after 2024 when 5G is expected to be more predominant. Therefore, BEREC considers that the regulation could foresee a review in 2025. This would allow enough time to set up an extensive costing study for 5G as there should be more data available. BEREC will be available to contribute and provide its support to the EC in conducting such a cost study. The review in 2025 could also be used to check if the new obligations on QoS, VAS and access to emergency communications fulfil their purpose or any adjustments / fine tunings are necessary.

2.5. NRAs' and BEREC's monitoring

BEREC welcomes that the EC continues to assign to NRAs and BEREC the relevant tasks of monitoring the roaming market, dispute resolution and providing guidelines. Both NRAs and BEREC have contributed to the smooth and consistent application of the roaming regulation since its first adoption and therefore have high level of expertise. BEREC has implemented an efficient and effective monitoring/supervision and data collection system through NRAs. Furthermore, BEREC welcomes the EC's proposal to reduce the regulatory burden for operators as well as BEREC and the NRAs by reducing the reporting obligation from twice a year to once a year, and the incorporation of all the required data in a single monitoring report, despite of maintaining the information required to evaluate seasonality effects (e.g. quarterly data). Article 19 of the legislative proposal states that *"Disputes between visited network operators and other operators on rates applied to inputs necessary for the provision of regulated wholesale roaming services may be referred to the competent national regulatory authority or authorities pursuant to Articles 26 and 27 of the Directive (EU) 2018/1972"* and, in that case, NRAs shall notify all disputes to BEREC.

However, those references do not only refer to Article 27 of the EECC, which covers cross-border disputes, but also to Article 26, which covers disputes between undertakings in the same Member State. This raises the question whether all disputes have to be notified to BEREC.

In BEREC's view, the legislative proposal is therefore not in line with the EECC, since a dispute between an MVNO and its host from the same Member State may not be automatically notified to BEREC according to Article 26 EECC, but it would be according to the legislative proposal for Roaming. Therefore, BEREC proposes to amend the text to only cover cross-border roaming disputes under Article 27 for a notification to BEREC.

2.6. Repeal of the obligation for the separate sale

BEREC agrees with the EC to withdraw the obligation for operators to provide separate sale of regulated retail roaming services, including the related Implementing Regulation. Although

this measure was tabled with a view to improving competition in the retail roaming market, according to data collected by BEREC this alternative was not used for offering retail roaming services. BEREC agrees that this provision became ineffective when the 'roam-like-at-home' rules were introduced and it would no longer be proportionate to oblige domestic providers to implement such a service.

3. Additional measures proposed by BEREC

In its 2019 and 2020 Opinion and input to the EC, BEREC included some additional measures that were not incorporated in the proposed regulation. BEREC considers that the following measures would be important to include:

- Roaming in networks onboard ships and planes that automatically connects users due to roaming agreements with the users' home networks: The current Roaming Regulation does not cover roaming on such networks, which results in a number of complaints registered by NRAs about bill shocks. Therefore, BEREC recommends for any review of the regulation to extend the Regulation to cover these networks with regard to transparency measures. This will entail that as a means to avoid bill shock, operators would have to inform customers of the prices that apply once they are connected to networks onboard ships and planes, and to cut off the service when a specific financial limit is exceeded.
- Cut-off limit: The previous revision of the Roaming Regulation amended the provisions of the cut-off limit. While initially it was foreseen as an opt-out mechanism for customers, it is now an opt-in possibility. This leads to the situation that a significant number of customers who are not aware or exercise choice to opt-in to the facility (cut-off limit) and are not actually opted-in are therefore not protected and can be confronted with bill shocks. While this is relatively less of a problem for roaming in the EEA due to RLAH regulated tariffs, it is much more sensitive when roaming outside the EEA as prices are much higher and bill shock may be more significant in particular as regards data overages. In this context, and to safeguard end-users, the mandatory cut-off limit should be operated as a default opt-out mechanism and should not be subject to any prior opt-in or positive action by a consumer to avail of the facility/cut-off limit/alerts in that regard.
- Personalised pricing information: BEREC recommends to amend the provision regarding the personalised pricing information so as to allow the customers to have a good overview – more detailed than the information included in the welcome Message¹¹ - of the prices for all different types of services. This could for example be done, by a link to a website or an application. In addition to the additional information on VAS (including freephone services) and emergency services that are proposed by the EC, BEREC suggests to also add information about any potential fair use limits as

¹¹ BEREC considers that the welcome SMS should cover the transparency obligations and at the same time should not overload the customer with too much information.

well as about the cut-off limit. Regarding the latter, this obligation would be especially helpful for roaming outside the EEA or on networks onboard ships and planes.

- Measures for enhancing the sustainability of MVNOs: BEREC has identified that MVNOs face some difficulties to compete with MNOs. One main reason is that they do not own the network they use and instead have to rely on MNOs both for national and international roaming. In addition, as in many cases they are small in size and they lack countervailing buying power. Also, the wholesale caps are an important element of the RLAH provisions, especially, when there are specific obligations on QoS. BEREC has already mentioned in its Opinion in 2020, that the wholesale caps should be consistent with any QoS requirements that might be introduced in the regulation. BEREC has proposed a list of measures to enhance their sustainability. BEREC would like to reiterate that additional measures are needed to increase their competitive power, such as:
 - a) Inclusion of more specific provisions about alternative wholesale roaming solutions like sponsored roaming. Recital 16 seems to give some guidance on the role of wholesale aggregators. However, BEREC proposes to include in article 3 more details on the possibility to use sponsored roaming and its protection by wholesale caps. This should not prevent providers of such wholesale solutions from charging additionally for other services they offer.
 - b) Include measures for incoming roaming calls for MVNOs. BEREC has in its Wholesale Roaming Guidelines identified termination of incoming calls as a service that must be offered to resellers of wholesale roaming. BEREC considers prices for these services should be fair and reasonable and has given some guidance in Guideline 16. To increase predictability and legal certainties for MVNOs, BEREC would welcome measures in the regulation for the pricing of resale of call termination
- Regarding M2M and IoT services and the topic of permanent roaming, BEREC appreciates that further guidance is included in the Recitals of the Regulation. BEREC however proposes to include a specific reference also in the Articles of the Regulation and make clear whether the Regulation covers M2M and IoT with the purpose of providing more legal certainty and thereby ensuring the provision of these services. Furthermore, BEREC appreciates that the EC includes provisions on monitoring the M2M roaming evolution. This allows the EC and BEREC to identify whether additional intervention is needed in the near future.

Finally, BEREC in its 2019 Opinion has suggested some amendments to the Commission Implementing Regulation 2016/2286 on the application of fair use policy and on the methodology for assessing the sustainability. The proposed amendments should be considered once the Implementing Regulation is updated. BEREC considers that this update should take place soon after the entry into force of the regulation.