

**BEREC GUIDELINES ON  
REGULATION (EU) 2022/612 and  
Commission Implementing Regulation (EU)  
2016/2286  
(Retail Roaming Guidelines)**

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## Introduction

According to Article 4 (3) and Article 8 (6) of Regulation (EU) 2022/612 (hereafter “Roaming Regulation”)<sup>1</sup>, BEREC shall update its retail roaming guidelines in close cooperation with the Commission and consult with stakeholders for the purpose of ensuring the consistent application of the provisions.

These revised BEREC Retail Guidelines are designed to explain the Roaming Regulation, including the Commission Implementing Regulation laying down detailed rules on the application of a “fair use policy” (FUP), on the methodology for assessing the sustainability of the abolition of retail roaming surcharges and on the application to be submitted by a roaming provider for the purposes of that assessment (hereafter “CIR”).<sup>2</sup> These Guidelines replace the BEREC Guidelines published in 2017 (BoR (17) 56).

As before, these revised Guidelines are complementary to the provisions set out in the Roaming Regulation and are not presented as an official legal interpretation of those provisions. These Guidelines are complementary to the BEREC Guidelines on wholesale roaming access. NRAs are to take these BEREC Guidelines into utmost account when supervising the compliance with the Roaming Regulation in their Member States.

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<sup>1</sup> Regulation (EU) 2022/612 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 6 April 2022 on roaming on public mobile communications networks within the Union (recast).

<sup>2</sup> Commission Implementing Regulation 2016/2286 of 15 December 2016 laying down detailed rules on the application of FUP and on the methodology for assessing the sustainability of the abolition of retail roaming surcharges and on the application to be submitted by a roaming provider for the purposes of that assessment. The Roaming Regulation foresees that the CIR will be updated. Once a new CIR is published, the Retail Guidelines will be updated taking into account the new provisions.

## **A. Scope of the Roaming Regulation**

### **a) Regulated roaming services**

1. “Union-wide roaming” means the use of a mobile device by a roaming customer to make or receive intra-Union calls, to send or receive intra-Union SMS messages or to use packet switched data communications, while in a Member State other than that in which the network of the domestic provider is located, by means of arrangements between the home and the visited network operator. Thus, a roaming service does not include a call made or SMS sent from the network of the domestic provider to another country in the Union (intra-EEA call or SMS).

2. The definition of “regulated roaming call” pursuant to Article 2 (2g) Roaming Regulation refers to mobile voice telephony calls made to or received from a public communications network within a Member State of the Union by a roaming customer connected to a visited network. This includes such calls e.g. when a customer of a Dutch or Norwegian operator is roaming in Spain and calls an Austrian customer located in the Union. The aforesaid applies analogously to “regulated roaming SMS messages” according to Article 2 (2i). “Regulated data roaming services”, according to Article 2 (2j), are data services consumed by a roaming customer whilst the customer is connected to a visited network in the Union.

3. BEREC notes that a regulated roaming call comprises a voice service as defined in Article 2 (2g) Roaming Regulation. This definition in itself is technology neutral, meaning that it is irrespective of the technical means used by a provider to connect voice telephony calls between users, so for example, VoLTE is also considered a voice call.

4. The definition of “regulated data roaming service” according to Article 2 (2j) applies irrespective of the technology used over a mobile communications network (e.g. GPRS, UMTS, LTE, 5G and any other or future technologies). However, regulated data roaming services, as a general rule, do not include services provided through a Wi-Fi connection, unless, for instance, the Wi-Fi connection in question is managed and/or used by a terrestrial public mobile communications network operator to allow or increase available network capacity and/or coverage as specified by 3GPP. Regulated data roaming services also include MMS (see Guideline 167).

5. Article 2 (2f) Roaming Regulation defines a “roaming customer” as a customer using regulated roaming services from a roaming provider by means of a terrestrial public mobile communications network situated in the Union whose contract or arrangement with that roaming provider permits Union-wide roaming.

### **b) Geographical scope of the Roaming Regulation**

6. The Roaming Regulation also applies to the EEA EFTA states Iceland, Liechtenstein and Norway when it is incorporated in the EEA agreement and approved by their respective parliaments.

7. The Roaming Regulation applies to communications made and received within the Union including the outermost regions. The territorial scope of the European Union

is defined by Article 355 Treaty of the functioning of the European Union.<sup>3</sup> Mobile operators are strongly advised to consult the EU Treaty in this regard. The transparency measures set out in Articles 13, 14 and 15 Roaming Regulation dealing with the welcome and data initiation messages and the cut-off limit for data roaming services apply to roaming services within the Union, and the measures set out in Article 13 and 14 Roaming Regulation also to roaming on non-terrestrial networks, as well as to roaming services outside the Union.

### ***B. Application of Roam-Like-At-Home (RLAH)***

8. Roaming providers must not levy any surcharge in addition to the domestic retail price on roaming customers in any Member State for any regulated roaming service (Article 4 Roaming Regulation).

9. With the abolition of retail roaming surcharges in the Union, the same tariff conditions apply for the use of mobile services while roaming abroad in the Union and at home (i.e. in the country of the mobile subscription of the customer), subject to the conditions set out in a FUP. Accordingly, wherever regulated roaming services are offered, the implementation of “Roam Like at Home” (RLAH) allows the customer to use services while travelling in other Member States in the same way as in their home country, i.e. that RLAH tariff effectively includes roaming services in the domestic bundle.

10. According to Article 4 (1) Roaming Regulation, roaming providers are not allowed to levy any general charge to enable roaming services to be used abroad. BEREC understands this provision to mean that roaming providers cannot add a direct or indirect/quasi surcharge for enabling roaming in the Union. An example of an indirect/quasi surcharge for enabling roaming would be if two otherwise identical/ very similar tariff plans of a roaming provider differ only in the fixed periodic fee and the ability to roam with the roaming-enabled plan being more expensive than the non-roaming-enabled plan. In consequence, two different prices for the same tariff plan with and without roaming service are not allowed. A further example could be a home network surcharging its customer for domestic calls made from the home network’s Member State to a customer in a roaming situation. Finally, it should be noted that customers on a non-roaming enabled tariff will not become entitled to receive roaming services at their existing domestic tariff.

11. According to Article 4 (2) Roaming Regulation, roaming providers are not allowed to offer less advantageous conditions in terms of quality of service (QoS) for regulated retail roaming services than the conditions offered domestically, provided the same generation of mobile communications networks and technologies are available on the visited network. As stated in Recital 27, roaming providers should take the necessary measures to ensure the same conditions for their customers as offered domestically. In particular, the maximum available speed in roaming should be at least the same as offered domestically, unless it is not technically feasible for the visited

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<sup>3</sup> For a recent judgment in the telecom area concerning Article 355 (2) on OCTs the reader may wish to consult paras 73 to 82 in the judgment in case C-327/15 TDC. For an interpretation of Article 355 (1) TFEU on outermost regions, the reader may consult the judgment in Case C-132/14 & co and the Opinion of Advocate General in that same case.

network or if it puts at risk its integrity. The roaming provider should not offer a lower speed than the maximum available speed provided domestically if the visited network offers a maximum available speed which is equal to, or higher than, the maximum available speed offered domestically by the roaming provider. The roaming provider should allow customers to be able to use the highest available speed if the visited network offers a lower maximum available speed than that offered by the roaming provider domestically. Where the network generation or technology available on the visited network is the same or older than that available in the home network, the roaming provider should provide the retail roaming services on the newest network generation and technologies available in the contracted visited networks. Where a newer network generation or technology is available on the visited network, the roaming provider should not restrict the roaming service to a network generation or technology older than that offered domestically. Furthermore, in particular during the transition to next generation mobile communications networks and technologies, where the implementation of those networks and technologies by the roaming provider and the visited network operator are not comparable, the roaming provider may offer the regulated retail roaming service with the existing mobile communications technology. Commercial considerations that result in a reduction of the quality of regulated retail roaming services, such as reducing bandwidth or speed to reduce roaming volumes, are prohibited.

12. According to Article 5 Roaming Regulation, roaming providers may apply a FUP to the consumption of regulated roaming services provided at the applicable domestic price in order to prevent abusive or anomalous usage of regulated retail roaming services by roaming customers, such as the use of such services by roaming customers in a Member State other than that of their domestic provider for purposes other than periodic travel. The CIR<sup>4</sup> stipulates the rules that apply when the roaming provider avails itself of that option to ensure the consistent application of a FUP in the Union.

13. Where roaming customers exceed the FUP, they may be required by the roaming provider to pay a surcharge for the consumption of any further regulated roaming service. However, Article 8 Roaming Regulation limits the amount of any such exceptional surcharge (see chapter E, Guideline 80). Any other sanctions (e.g. withdrawal of roaming services) are not in line with the Roaming Regulation.

### ***C. Domestic retail price as basis for retail roaming prices***

14. As a general rule, roaming providers cannot apply a price for regulated roaming services which exceeds the price that would be incurred by the customers if they were consuming those services in the home country. This is known as the domestic retail price as defined in Article 2 (2n) Roaming Regulation.

15. In the case of per-unit domestic retail prices, roaming providers may apply different prices for calls or SMS to the network of the customer (“on-net”) than to a network other than the customer’s network (“off-net”), with the latter typically exceeding the former. For the purposes of the Roaming Regulation, according to Article 2 (2n)

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<sup>4</sup> The Roaming Regulation foresees that the CIR will be updated. Once a new CIR is published, the Retail Guidelines will be updated taking into account the new provisions



Roaming Regulation, roaming providers may consider the off-net price as the domestic retail price. In case there are different off-net prices in a subscription, roaming providers must use the same charging mechanism which would apply to the relevant roaming customers in their Member State.

16. If there is no specific domestic per-unit retail price, such as domestic unlimited tariff plans or bundles<sup>5</sup> (tariffs with a volume allowance), Recital 26 specifies that the domestic retail price must be based on the same charging mechanism as if the customers were consuming the domestic tariff plan in their Member State. For bundled tariffs,<sup>6</sup> roaming providers must apply the same charging mechanism as in their home country and therefore any usage (either voice, SMS or data) should be deducted from the domestic allowance (in case of voice and SMS, it could be the off-net allowance).

17. In some domestic tariffs, calls and/or SMS to limited groups (for example family members, a group of friends or business colleagues) may benefit from preferential tariffs. In this case, roaming providers should not charge more than the off-net domestic price (for roaming calls and/or SMS made to that limited group, subject to the FUP). In cases where these conditions contain a bundle or a package, roaming providers can deduct, as a maximum, the off-net units from these allowances. In tariff plans applicable to a group of users where the data allowance can be shared among a number of users, the same rules apply, meaning that the data allowance can be shared by all the users while roaming.

If roaming providers apply a fee for initiating a call (set-up fee) for domestic services, they could also do so for the domestic price component for roaming services.

#### ***D. Fair Use Policy<sup>7</sup>***

18. A FUP should enable the roaming provider to prevent abusive or anomalous usage such as the use of roaming services for purposes other than periodic travel (Article 5 Roaming Regulation).

19. The basic principle of the FUP is that a roaming provider provides regulated retail roaming services at the domestic price under the same conditions as if such services were consumed domestically to those of its customers who are normally resident or have stable links entailing a frequent and substantial presence in the Member State of that roaming provider and are roaming while they are travelling in the Union.

20. Apart from the normal residence or stable links requirements, other elements of a FUP include the control mechanism based on objective indicators, the measures to stop organised resale of SIM cards<sup>8</sup> as well as the limits for open bundles and pre-paid subscriptions. The implementation of one or more of these concepts should be considered as an implementation of a FUP.

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<sup>5</sup> Unlimited tariff plans or bundles can include one or more mobile retail services.

<sup>6</sup> Bundled tariffs are tariffs that include more than one service (voice, SMS and data) against a fixed charge.

<sup>7</sup> The Roaming Regulation foresees that the CIR laying down detailed rules on the application of FUP will be updated. Once a new CIR is published, the Retail Guidelines will be updated taking into account the new provisions.

<sup>8</sup> The term 'SIM cards' is being used throughout this document to refer to both replaceable physical SIM cards and embedded SIMs (eSIMs).

21. Exemptions to the applicable FUP should be allowed in cases of force majeure, such as pandemics, temporary border closures or natural disasters. Such exceptional circumstances may force roaming customers to stay in a visited country for a longer period. Roaming providers should therefore extend the applicable FUP for an appropriate period if the roaming customer makes such a request.

22. Pre-paid tariffs may entail challenges with regard to informing customers about the data volumes available at domestic prices as a function of remaining credit as specified in Article 4 (3) CIR. The main principles for calculating the available volume should be described in a clear manner in contracts and may be illustrated by setting out the volumes available for specific amounts of credit (such as volume available for one or ten euros of credit).

23. The criteria applied by a roaming provider as objective indicators to prevent the risk of abusive or anomalous usage such as the use of roaming services for purposes other than periodic travel should, in accordance with Article 4 (4) CIR, be spelt out in advance in the contract which includes the FUP as stipulated in Article 5 (1) CIR. The contract should include:

- a description of the objective criteria applied, that is, the grounds on which the provider may issue an alert and apply a surcharge pursuant to Article 5 (3) and (4) CIR, including:
  - definition and duration of the observation window;
  - information on how consumption and presence are calculated for the purpose of imposing any surcharge (including to which mobile retail service(s) the consumption indicator relates, 4 (4) subparagraph 4 CIR);
  - a notification alerting the customer that the observation window is being followed by the roaming provider and to the possibility for the roaming customer to change their usage pattern within an alert period by demonstrating actual domestic consumption or presence to avoid the surcharge (in line with Article 5 (4) CIR);
- a description of the procedure that the roaming customer shall follow to submit complaints as provided in Article 5 (1) CIR;
- a description of the criteria for ceasing to apply a surcharge (pursuant to Article 5 (5) CIR).

24. The roaming provider must put in place transparent, simple and efficient procedures to address customer complaints relating to the application of a FUP (pursuant to Article 5 (1) CIR). The customer should be able to quickly and easily contact the provider, especially when the provider has issued an alert regarding the observation window and later when the roaming services used by the customer are being surcharged. BEREC considers that the roaming provider should provide interfaces for customer complaints of this kind like chats, call centres, customer support via e-mail etc. Such interfaces should make it simple for customers to provide evidence that the alert is not based on correct or complete information and to provide evidence that the alert is based on incorrect or incomplete information and to provide evidence that they are using the roaming services in question for purposes of periodic travel.

25. Any FUP for regulated roaming services shall be notified to the NRA according to Article 5 (2) CIR. The roaming provider should send full information on the FUP to the NRA either in advance of implementation or, at the latest, immediately after the FUP becomes applicable.

26. The possibility to apply a roaming FUP should not be exploited by roaming providers to the detriment of roaming customers engaged in any form of periodic travel (Recital 4 CIR). For the purpose of a FUP to be applied by a roaming provider, a customer should ordinarily be considered to be periodically travelling abroad in the Union when that customer is normally residing in the Member State of the roaming provider or has stable links with that Member State entailing frequent and substantial presence on its territory, and consumes regulated retail roaming services in any other Member State (Recital 7 CIR).

**a) Normal residence and stable links**

27. Article 3 CIR, read in conjunction with Recitals 10 and 11, establishes the principle that a roaming provider shall provide regulated roaming services at the applicable domestic price for its roaming customers who are “normally resident” or who have “stable links entailing a frequent and substantial presence” in the Member State of that roaming provider. Article 2 (2 a) CIR defines “stable links” with a Member State by describing situations listed in the following non-exhaustive list:

- Full-time and durable employment relationship, including that of frontier workers;
- durable contractual relations entailing a degree of physical presence analogous to a self-employed person;
- participation in full-time recurring courses of study;
- other situations such as posted workers or retired persons, whenever they involve an analogous level of territorial presence to the other categories.

28. Recital 10 CIR stipulates that in order to ensure that retail roaming services are not subject to abusive or anomalous usage unrelated to periodic travel, roaming providers may need to determine the normal place of residence or the existence of stable links of their roaming customers. For this purpose, the roaming provider should be able to specify reasonable evidence of the place of residence or stable links in a way that is transparent to its customers and under the supervision of the national regulatory authority (NRA) as to the proportionality of the overall documentary burden and its appropriateness in the national context.

29. Recital 10 CIR provides a non-exhaustive list of documentary evidence that roaming providers may rely on in order to establish residence and/or stable links. A key principle is that the roaming provider may request such documentation, however, any such request of proof should be reasonable and is not compulsory. In addition, the roaming provider's request of documentary evidence should have regard to the customary forms of such proof already used in the particular Member State and to the perceived level of risk of abusive or anomalous usage.

30. BEREC finds that all customers should be given a non-exhaustive list of possible documentary evidence, announced in advance (for example, on the roaming provider's

website), from which they could choose, if any proof should be deemed necessary. BEREC further considers that all such customers could be invited to select any applicable category as a stable link from the suggested list. In this regard, BEREC considers it reasonable and proportionate that any easily accessible credible evidence demonstrating stable links with the Member State (as opposed to permanent residence) should be acceptable for the purposes of acceptance at the contract set-up stage.

31. Any of the following could be considered as evidence proving normal residence or stable links in view of Recital 10 CIR and the requirements of necessity and proportionality (this can be checked by the provider at a later stage in accordance with Recital 11 CIR):

- A declaration by the customer;
- presentation of any valid document which proves that the person falls into one of the categories of stable links;
- details of the customer's address and/or details showing the provision of any other services to them at the given address (e.g. a utility bill);
- a declaration or other proof from an employer or educational establishment;
- evidence of a posting in a Member State where the roaming contract has been requested;
- proof of registration with the local council or any other public authority;
- registration in a population registry indicating that the customer is permanently residing in that Member State;
- additional evidence (in the case of cross-border workers) of employment by a company in a different country of residence;
- any other reasonable evidence not listed in Recital 10 CIR that could be used to prove stable link or permanent residence, such as a valid property rental agreement;
- in the case of business customers, relevant evidence might include documentary proof of the establishment or activities of the business in the Member State concerned.

32. Article 4 (1) CIR stipulates the possibility for the roaming provider to demand proof of normal residence or of other stable links with the customer's Member State entailing a frequent and substantial presence on its territory before providing regulated retail roaming services at the applicable domestic retail price. Such documentary proof may be requested before or after conclusion of a contract. Any requests of proof of normal residence or stable links after conclusion of a given contract should be limited strictly to circumstances in which data that have to be collected for billing purposes appear to provide indications of abusive or anomalous usage unrelated to periodic travel (Recital 11 CIR). If such request is made either at the time of concluding a contract or after an alert according to Article 5 (3) CIR, and a customer cannot supply the required stable links or permanent residence documentation, the roaming provider does not have to offer RLAH to that customer but would instead be able to apply a surcharge for any further roaming activity. Information about applicable surcharges is included in chapter

E. In the case of the evidence requested after the conclusion of a given contract (that is after the minimum four-month observation period), Recital 11 CIR stipulates that:

- Such requests should be limited strictly to circumstances in which data, that have to be collected for billing purposes, appear to provide indications of abusive or anomalous usage unrelated to periodic travel;
- the evidence should only comprise what is strictly necessary and proportionate to confirm the customer's attachment to the Member State of the roaming provider; and
- there should be no requirement for recurrent submission of such documentation unrelated to a risk-based assessment of the probability of abusive or anomalous usage.

***b) Control mechanism and objective indicators***

33. To prevent abusive or anomalous usage of regulated retail roaming services beyond periodic travelling in the Union, Article 4 (4) CIR stipulates that roaming providers may apply fair, reasonable and proportionate control mechanisms based on objective indicators.

34. The CIR limits the objective indicators to two types that can be used by the roaming provider to identify risks of abusive or anomalous use:

- The prevailing consumption and presence criteria;
- other objective indicators
  - long inactivity of a given SIM card associated with use mostly, if not exclusively, while roaming
  - subscription and sequential use of multiple SIM cards by the same customer while roaming.

35. In relation to the first type of objective indicators, pursuant to Article 4 (4) subparagraph 2 CIR, a roaming provider may take measures to establish whether a customer has prevailing domestic consumption over roaming consumption or prevailing domestic presence over roaming presence. These indicators should be observed cumulatively (Article 4 (4) subparagraph 3 CIR).

36. In relation to the second type of objective indicators, the other objective indicators are exhaustively provided for in Article 4 (4) subparagraph 7 CIR and refer to long inactivity of a given SIM card associated with use mostly, if not exclusively, while roaming, and the subscription and sequential use of multiple SIM cards by the same customer while roaming.

***i) Prevailing domestic consumption or presence over roaming consumption or presence***

37. The CIR stipulates that:

- The objective indicators may include measures to establish whether customers have prevailing domestic consumption over roaming consumption or prevailing domestic presence over presence in other Member States of the Union (Article 4 (4) subparagraph 2 CIR);

- roaming providers shall observe such indicators of presence and consumption cumulatively (Article 4 (4) subparagraph 3 CIR);
- the objective indicators of presence and consumption shall be observed for a period of time of at least four months (hereafter “observation window”) (Article 4 (4) subparagraph 3 CIR).

38. The CIR does not detail what is considered “prevailing” domestic consumption or presence. Given the ordinary meaning of the term, BEREC considers that prevailing domestic consumption occurs if more than 50% of the mobile services are consumed domestically within the observation window. The same holds respectively for prevailing domestic presence. Recital 15 CIR states that presence and consumption outside the Union should be considered domestic in this regard. Furthermore, the CIR states that in relation to these indicators any day a roaming customer has logged on to the domestic network (for any length of time) shall be counted as a day of domestic presence (Article 4 (4) subparagraph 6 CIR).

39. In relation to the assessment of prevailing domestic presence, the roaming provider should assess the prevailing domestic presence on the basis of data available to the roaming provider. For example, if the customer has not logged on to any network during a day (e.g. device is switched off), such a day should not be taken into account in determining whether there is prevailing domestic presence. In this case, the roaming provider should assess, on the basis of the days during which the customer has logged on to a network, whether there have been more days of domestic presence over presence in other Member States.

40. Article 4 (4) subparagraph 3 CIR stipulates that the indicators relating to prevailing consumption or presence shall be observed cumulatively and for a period of time of at least four months. In line with this, Article 4 (4) subparagraph 5 CIR (and reflected in Article 5 (3) subparagraph 2 CIR) establishes a “safe harbour” for roaming customers. Either prevailing domestic consumption or prevailing domestic presence of the roaming customer during the defined observation window is to be considered as proof of non-abusive and non-anomalous usage of regulated retail roaming services.

41. BEREC understands that roaming providers may examine on any given day whether a customer had prevailing domestic consumption or presence during the observation window. In doing so, BEREC understands that providers shall take into account an observation window consisting of the preceding consecutive four months or more, in accordance with the terms of the applicable FUP. It follows that the roaming provider, in order to alert the customer of the application of a surcharge, must be able to demonstrate that there is neither prevailing domestic consumption nor prevailing domestic presence by the roaming customer over the latest available preceding consecutive four months or longer. No shorter observation window may be used for any customers (existing and new customers) for the purposes of potential alerts and surcharging under the FUP.

42. The prevailing consumption criteria may relate to one or more mobile retail services (Article 4 (4) subparagraph 4 CIR). The roaming provider might determine the prevailing consumption per regulated retail roaming service (voice, SMS, data) individually and the prevailing domestic presence according to Guideline 40, and may send an alert and apply the subsequent surcharge to the particular retail roaming

service(s) regarding which risk of abusive or anomalous usage has been detected during the observation window.

*ii) Other objective indicators:*

43. Regarding other indicators, in Article 4 (4) subparagraph 7 CIR sets out the following indicators:

- Long inactivity of a given SIM card associated with use mostly, if not exclusively, while roaming;
- subscription and sequential use of multiple SIM cards by the same customer while roaming.

44. BEREC understands “inactivity” to mean that the SIM card was not used for making or receiving a call, sending an SMS or for data services; or that there is virtual absence of such use. Inactivity could occur over a single continuous period such as of two or three months, or sequential periods of domestic inactivity (several weeks) in combination with mostly roaming use. BEREC considers it good practice to monitor such usage over a four-month observation window in line with the rule applicable to indicators of domestic presence and consumption.

45. BEREC notes that the objective indicator “subscription and sequential use of multiple SIM cards by the same customer while roaming” is not subject to any specific observation window.

46. Guidance on the alert which should be given to customers when their behaviour pattern is indicating risk of anomalous or abusive use is discussed in chapter M (Guidelines 148 to 154).

**c) Organised resale**

47. According to Article 4 (5) CIR, the roaming provider may take immediate proportionate measures in case of organised resale to ensure compliance with all conditions of the underlying contract. Organised resale occurs when a number of SIM cards have been the object of organised resale to persons not effectively residing or having stable links in the Member State of that retail roaming provider for other purposes than periodic travel. These measures can be at wholesale or retail level according to the violation of contract conditions that has been evidenced by the roaming provider.

48. If a roaming provider detects that its SIM cards are part of organised resale to users that do not qualify for RLAH, immediate actions could be taken according to Article 4 (5) CIR and chapter D. Any measures taken must be outlined and reported by the roaming provider to the domestic NRA, along with a description of the type of evidence the roaming provider has for the systematic abuse in question. Such notification shall be made at the latest at the same time as such measure is taken (Article 5 (6) CIR).

**d) Fair use policy concerning open data bundles**

49. According to the definition in Article 2 (2 c) CIR, open data bundle means a tariff plan for the provision of one or more mobile retail services which does not limit the volume of mobile data retail services included against the payment of a fixed periodic

fee. It can also refer to cases where there is a data bundle for which the domestic unit price of mobile data retail services, derived by dividing the overall domestic retail price, excluding VAT, for mobile services corresponding to the entire billing period by the total volume of mobile data retail services available domestically, is lower than the regulated maximum wholesale roaming cap referred to in Article 11 Roaming Regulation. This implies that there are two types of open bundles:

- Unlimited data tariffs;
- tariffs where the implicit domestic unit price for data is lower than the regulated maximum wholesale cap.

50. According to Recital 13 CIR, open bundles are more likely than other tariff plans to be subject to organised resale to persons, or to anomalous or abusive usage. This might lead to the disappearance of such roaming enabled tariff plans in domestic markets. Therefore, roaming providers may apply volume limits to open bundles in addition to the other FUP measures (normal residence, stable links and control mechanism based on objective indicators related to the risk of abusive or anomalous use of roaming services beyond periodic travelling, see chapter D, Guidelines 27 to 46).

51. In order to determine the minimum fair use volume of regulated data roaming service allowances that may be applied to open bundles, three steps are necessary:

- Definition of the domestic retail price of mobile services that is to be applied in the calculation used to determine whether the bundle is an open data bundle and the minimum fair use volume of data roaming services to be associated with the open bundle (see steps below);
- identification of whether a bundle can be considered an open bundle;
- calculation to determine the minimum fair use volume of data roaming volume allowance associated with the open bundle (hereafter the “roaming data allowance”).

52. It should be noted at the outset that in the calculation required to assess whether a limited bundle is an open data bundle, the domestic retail price of the bundle should be divided by the volume of data services only (i.e. the volume of minutes of voice calls and SMS should be excluded from the calculation).

53. BEREC considers that in case of domestic bundles for which the speed of the subscription is throttled (at domestic level) after a data allowance limit is reached, the data limit does not in fact limit the volumes consumed and therefore these kinds of subscriptions may be treated as unlimited open data bundles, for the purposes foreseen in Article 2 CIR (though they are not unlimited tariffs in a general sense).

*Definition and determination of domestic retail price of open data bundles*

54. The relevant domestic retail price for determining whether a tariff plan for a mobile communications service with a limited data allowance is an open data bundle and/or for determining the minimum roaming data allowance (for all open bundles, i.e. including the unlimited bundles) is the fixed periodic fee payable for the mobile retail services included in the tariff plan. Mobile retail services are defined as public mobile



communications services provided to end-users, including voice, SMS and data services (Article 2 (2 b and c), Article 4 (2) CIR).

55. In the event that the domestic retail price includes services other than mobile retail services, such as fixed electronic communication services, Article 4 (2) subparagraph 2 CIR stipulates that the domestic retail price of the data bundle shall be determined by taking into account the price applied for the separate sale of the mobile retail service component of the bundle, excluding VAT, if available, or the price for the sale of such services with the same characteristics on a stand-alone basis. On this basis, BEREC considers that deducting stand-alone prices for non-mobile services from the price of the overall bundle would not be consistent with the CIR.

56. A mobile handset subsidy should be considered as a non-mobile service (other non-mobile services could be cloud services, news services, fixed access services, etc.). In this case, the roaming provider may choose to apply the domestic retail price for the separate sale of the mobile service component (e.g. SIM-only offer) or the domestic retail price for the sale of such services with the same characteristics (e.g. same volume of voice minutes, SMS and data). BEREC considers that only tariff plans from the same roaming provider can be taken into account for the calculations. In case roaming providers do not offer a mobile service component with the same characteristics separately, roaming providers shall find a solution in coordination with the NRA to define the mobile retail price in line with the CIR.

57. According to Article 2 (2 b) CIR, the definition of mobile retail services includes mobile communications services such as voice, SMS and data services. Therefore, for bundles including two or more services (voice, SMS and/or data services), the full price for these services should be used, and roaming providers are not allowed to use other stand-alone data tariffs or data add-ons as a reference for the calculations to define the open bundle and the corresponding roaming data allowance.

58. When a tariff plan contains a discount scheme for the domestic retail price, BEREC considers that roaming providers could either take the price without discount or the reduced price over that billing period as the domestic retail price, consistent with Recital 13 CIR. In case the roaming provider takes the reduced price, after the billing period(s) with price discounts, the domestic price of the bundle without discount applies (both for the definition of open bundle as well as for the calculation of the roaming data allowance).

59. When customers purchase an add-on to their bundle for additional domestic mobile retail services beyond the allowances included in their bundle, such an add-on shall be subject to the same treatment as the bundle for the purposes of determining whether the roaming provider may apply limits to the consumption of data roaming services, consistent with Article 4 (2) CIR.

60. When a roaming provider provides additional add-ons e.g. in terms of volume to the customer (e.g. specific promotion), the customer shall be able to consume this allowance while roaming in the Union under the same conditions as at home.

*Examples of open data bundles concerning limited offers*

61. In line with Article 2 (2 c) CIR, BEREC provides the following examples for the definition of open data bundles:

- A domestic retail price, excluding VAT, for mobile services is 18 euro per month with a data allowance of 10 GB per month. After consuming 10 GB, the data service is stopped. The wholesale data roaming cap is 2 euro<sup>9</sup> per GB. 18 euro divided by 10 GB gives a price of 1.80 euro per GB. This is lower than the wholesale data roaming cap of 2 euro per GB. Therefore, such a bundle can be considered as an open data bundle.
- An overall domestic retail price, excluding VAT, for mobile services is 10 euro per month with a data allowance of 4 GB per month (not throttled once the threshold is reached). The wholesale data roaming cap is 2 euro per GB. 10 euro divided by 4 GB gives a price of 2.50 euro per GB. This is higher than the wholesale data roaming cap of 2 euro per GB. Therefore, this bundle is not an open data bundle.

*Determination of the minimum volume limit that may be applied to the data roaming service in open data bundles*

62. Without prejudice to any applicable domestic volume limit, in the case of an open data bundle according to Article 4 (2) CIR, the roaming customer shall be able to consume, when periodically travelling in the Union, a volume of data roaming retail services at the domestic retail price equivalent to at least twice the volume obtained by dividing the overall domestic retail price of that open data bundle, excluding VAT, corresponding to the entire billing period by the regulated maximum wholesale roaming cap referred to in Article 11 Roaming Regulation.

63. It should be noted that in practice this implies that for limited offers there may be two different types of open data bundles:

- Open data bundles for which the minimum roaming data allowance (calculated as described in accordance with Article 4 (2) CIR) is larger than the domestic data allowance: In this case the roaming customer shall be able to consume roaming volumes at the domestic retail price to at least the full amount of the domestic data allowance. Once the domestic data allowance is exceeded, the domestic out-of-bundle charging mechanism applies until the roaming data allowance is reached. Only after the roaming data allowance is exceeded, roaming providers may apply a surcharge in addition to the domestic out-of-bundle charging mechanism, according to Article 8 (1) Roaming Regulation. In cases where roaming providers stop providing data services after the domestic data allowance is reached, the same mechanism should be used while customers are roaming in the Union. If the customer subscribes to an add-on, the add-on shall be treated in accordance with Guideline 59.
- Open data bundles for which the minimum roaming data allowance is lower than the domestic data allowance: In this scenario the roaming customer shall be able to consume roaming volumes at the domestic retail price to at least the roaming data allowance (calculated in accordance with Article 4 (2) CIR) which in these cases will be lower than the domestic data allowance of the open bundle. After the roaming data allowance is exceeded, roaming providers

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<sup>9</sup> The wholesale data roaming cap according to Article 11 Roaming Regulation applies as of 1 July 2022 and will gradually decrease until 2032.

may apply a surcharge in addition to the domestic price until the domestic limit has been reached. After the domestic data allowance and the roaming data allowance are exceeded, roaming providers may apply a surcharge in addition to the domestic out-of-bundle price, according to Article 8 (1) Roaming Regulation.

64. BEREC provides the following examples for the calculation of the roaming data allowances (assuming a wholesale cap of 2 euro per GB):

- A mobile tariff offer of 40 euro per month excluding VAT including unlimited voice, SMS and data consumption: This is an open data bundle tariff as it includes an unlimited data allowance. The roaming provider might apply a roaming data allowance of at least 40 GB  $((40/2)*2)$  when roaming.
- A mobile data-only bundle for 10 euro per month excluding VAT including 8 GB data: The domestic retail price is 10 euro since there is no other non-mobile service included. This bundle is an open data bundle  $(10/8 < 2)$ . A roaming customer using this offer shall be able to consume roaming data volumes of at least 10 GB. As the roaming data allowance is larger than the domestic data allowance the roaming customer shall be able to consume roaming volumes at the domestic retail price (until the domestic data allowance is reached, it is deducted from the allowance; after exceeding it, the out-of-bundle price applies) to at least the full amount of the roaming data allowance.
- A domestic bundle of mobile services for 10 euro excluding VAT per month for unlimited voice, unlimited SMS and 15 GB of data volume: This bundle is an open data bundle  $(15\text{€}/10\text{GB}=1,50\text{€}/\text{GB}; 1,50\text{€}/\text{GB} < 2,00\text{€}/\text{GB})$ . A roaming customer using this offer shall be able to consume roaming data volumes at the domestic retail price of at least 10 GB  $((10/2)*2)$ .
- A domestic dual play offer consisting of mobile services and fixed internet access of 30 euro excluding VAT per month: The mobile service includes unlimited voice, unlimited SMS and 30 GB data. Since there is a non-mobile service in the bundle, the domestic retail price of a stand-alone mobile service offer with the same characteristics could be used as the domestic retail price, e.g. a SIM-only offer with unlimited voice and unlimited SMS and 30 GB data for 20 euro excluding VAT per month. The domestic retail price for mobile services that is the basis for the calculations is 20 euro. This bundle is an open data bundle. A roaming customer with this offer shall be able to consume roaming data volumes without any roaming surcharge of at least 20 GB  $((20/2)*2)$ .
- A mobile service consisting of either 2,000 minutes or 2,000 SMS or 2,000 MB or any combination to a maximum cumulative amount of 2,000 units for 3 euro excluding VAT per month: This tariff is an open bundle, and the roaming customer should be able to consume at least 3 GB when roaming  $((3/2)*2)$ . As the roaming data allowance is larger than the domestic data allowance, the roaming subscriber shall be able to consume roaming volumes at the domestic retail price to at least the full amount of the roaming data allowance (until the domestic data allowance is reached, it is deducted from the allowance; after exceeding the domestic charging mechanism applies e.g. out-of-bundle price).

65. For the avoidance of doubt, open data bundles can also be subject to the control mechanisms laid out in Article 4 (4) CIR discussed in the Guidelines 33 to 46 above.

66. Whenever a customer starts using roaming services between the start and end of their billing period and the customer has already used a part of the domestic available volumes, the domestic volume cap applies irrespective of the roaming fair use limit. For example, only 2 GB of domestic usage might remain at the moment of commencing roaming of a domestic bundle of 5 GB. After going beyond the domestic volume limit (5 GB), but remaining within the available data roaming fair use limit, the roaming provider must apply the same conditions as if such services were consumed domestically, e.g. the out-of-bundle domestic retail price can be charged (in the same billing period), the data services may be cut-off, the speed may be reduced or an add-on can be offered. The roaming surcharge can only be applied when the roaming data consumption exceeds the roaming fair use limit.

**e) Pre-paid tariffs**

67. According to Article 2 (2 d) CIR, a pre-paid tariff plan means a tariff plan under which mobile retail services are provided upon deduction of credit made available by the customer to the provider on a per-unit basis, in advance of consumption, and from which a customer may withdraw without penalty upon exhaustion or expiry of credit. Therefore, only tariffs offered to pre-paid customers that are charged per unit are pre-paid tariffs. Post-paid per-unit tariffs do not fall under this definition.

68. Other types of tariffs offered to pre-paid customers, such as tariffs that include a bundle of retail mobile services, should not be considered as pre-paid tariffs for the purposes of the CIR. For example, in the case of such tariffs, the roaming provider may determine if they can be considered open data bundles.

69. In accordance with Article 4 (3) CIR, roaming providers may limit the consumption of data roaming retail services for pre-paid tariffs at the domestic retail price as an alternative to requesting proof of normal residence or other stable links (Guidelines 27 to 32). This means when applying this volume limitation, a FUP based on normal residence and stable links is not allowed to be applied. This limit on consumption of data roaming retail services within the Union has to be calculated at the moment when a user of a pre-paid tariff plan starts roaming, i.e. crosses the border out of the Member State of the home network.

70. The limit on consumption of data roaming retail services within the Union (see Guideline 69) shall include the volume obtained from the following calculation: overall amount of remaining pre-paid credit (excl. VAT) divided by the applicable wholesale data cap.

71. The remaining credit when a customer starts to use data roaming services in another Member State should be used for the calculation. When a customer is already periodically travelling within the Union and tops up the credit, the roaming provider should recalculate the data fair use volume and BEREC considers it best practice that the customer is informed about the recalculation. Similarly, this revised limit should be calculated dividing the overall amount of remaining pre-paid credit (excl. VAT) by the applicable wholesale cap.

72. The consumption of pre-paid credit for roaming calls or SMS at the applicable rate will reduce the available credit for data roaming during the same trip, irrespective of the roaming data limit.

73. The roaming provider must inform the customer via the personalised pricing information in line with the provisions in Article 14 Roaming Regulation (see chapter M) about the roaming data allowance (when using data roaming services in that particular Member State for the first time).

74. BEREC provides the following examples for pre-paid offers and their associated roaming data limits:

- A pre-paid customer has a remaining credit of 20 euros (excl. VAT) when starting to use data roaming services in a Member State. The pre-paid tariff of the customer includes a data price of 1 euro cent (excl. VAT) per MB. With the remaining credit available, the customer would be able to consume up to 2 GB of data domestically. Assuming the wholesale data cap is 2 euros per GB (and the remaining 20 euros credit), the roaming volumes as calculated based on Article 4 (3) CIR for this customer would be 10 GB. Since the volume limit that the roaming provider can apply to data roaming is larger than the domestic data volume that the customer can buy with the remaining credit, the user is only able to consume roaming data volumes until the credit is exhausted. It should be noted that this example considers that the customer only consumes volumes of data services. However, where a customer on a pre-paid offer consumes other mobile retail services while roaming or domestically (e.g. SMS and/or voice calls), these would be debited from the remaining credit at domestic retail prices and this will in turn reduce the available credit for consumption of further mobile retail services (i.e. data, SMS and voice calls) both while roaming and domestically. In this case, the roaming providers cannot apply a fair use limit for data roaming, because the roaming data allowance calculated according to the CIR's formula is higher than the domestic data volume, and the roaming provider therefore does not have to include information about the roaming data allowance in the personalized pricing information.
- A pre-paid customer has a remaining credit of 20 euro (excl. VAT) when starting to roam in the Union. The unit price for data is 0.05 euro cent per MB (excl. VAT). In this example, the customer would be able to consume up to 40 GB of data domestically. Assuming a wholesale data cap of 2 euro per GB (and the remaining 20 euro of credit), the roaming provider may limit data roaming volumes offered at the domestic price without any surcharge for this customer to 10 GB. It should be noted that this example considers that the customer only consumes volumes of data services. As mentioned above, if the customer consumes roaming calls and SMS, this impacts the available credit for data roaming (see Guideline 72).

75. For the avoidance of doubt, pre-paid tariffs can also be subject to the control mechanisms in Article 4 (4) CIR discussed in Guidelines 33 to 46 above.

### ***E. Application of a surcharge***

76. In general, the Roaming Regulation does not allow roaming surcharges. Nevertheless, BEREC identifies two main cases where surcharges can be applied by roaming providers:

- Surcharges can be applied where regulated roaming retail services are used in excess of any limits set by any FUP in line with Article 8 Roaming Regulation.
- Surcharges can be applied to ensure the sustainability of a roaming provider's domestic charging model. In this case, the surcharge must be authorised by the competent NRA pursuant to an application by the roaming provider for authorisation to apply a surcharge (see chapter S).

#### *Surcharges in excess of or non-compliance with FUP*

77. For the avoidance of doubt, there are several cases when a FUP under the conditions of the CIR is breached or a data volume limit is exceeded and the roaming provider is allowed to apply surcharges. These relate to the following situations:

- a. the customer does not have or does not want to provide documentary evidence of a normal residence or stable links (chapter D, Guidelines 27 to 32);
- b. the roaming provider has substantiated evidence that there is a risk of abusive or anomalous usage, such as the use of roaming services for purposes other than periodic travel (chapter D, Guidelines 33 to 46);
- c. the data roaming usage exceeds the roaming data allowance for open data bundles (chapter D, Guidelines 49 to 66);
- d. the data usage exceeds the volume limit of roaming data calculated in accordance with Article 4 (3) CIR associated with the remaining pre-paid credit of the customer (chapter D, as an alternative to the stable link and normal residence concept, Guidelines 67 to 75).

78. While cases a and b of breaching the FUP may refer to imposing a roaming surcharge on any roaming service (voice, SMS and data), the exceeding of roaming data allowances in cases c and d can only lead to the imposing of roaming surcharges on data roaming retail services.

79. According to Article 8 Roaming Regulation, in case of the application of surcharges regarding open data bundles and pre-paid offers, the roaming provider is allowed to apply a surcharge on data roaming retail services immediately after the roaming data allowance is exhausted.

80. In the case of non-compliance with the FUP, the applicable surcharges must meet the requirements specified in Article 8 Roaming Regulation, namely:

- The level of surcharges for regulated roaming calls made, regulated roaming SMS sent and regulated data roaming services cannot exceed the maximum wholesale caps specified in Articles 9, 10 and 11 Roaming Regulation;
- any surcharge applied for regulated roaming calls received should not exceed the single maximum Union-wide mobile voice termination rate set for that year

in accordance with Article 75 (1) of Directive (EU) 2018/1972 and the Commission Delegated Regulation (EU) 2021/654.<sup>10</sup> Where the Commission decides, following its review of the delegated act adopted pursuant to Article 75(1) of Directive (EU) 2018/1972, that setting a Union-wide voice termination rate is no longer necessary and decides not to impose a maximum mobile voice termination rate, any surcharge applied for regulated roaming calls received shall not exceed the rate set by the most recent delegated act adopted pursuant to Article 75 of that Directive.

*No documentary evidence of residence or stable links*

81. In case a (see Guideline 77), if a roaming provider requests documentary evidence proving that a customer is normally resident in or have stable links entailing a frequent and substantial presence in the Member State of that roaming provider (see Guidelines 27 to 32) and the customer does not provide it, the roaming provider can apply roaming surcharges for that customer's consumption of regulated retail roaming services.

82. For the avoidance of doubt, this would apply to all mobile roaming retail tariff plans, including open data bundles, and with the sole exception of pre-paid tariffs for which the roaming provider applies a data roaming volume limit in accordance with Article 4 (3) CIR (as an alternative to proof of stable link or normal residence).

83. The surcharges may apply to all mobile retail services (i.e. voice calls, SMS and data).

*The roaming provider has substantiated evidence that there is a risk of abusive or anomalous use beyond periodic travelling*

84. In case of b (see Guideline 77), if a roaming provider has substantiated evidence that there is a risk of abusive or anomalous use, such as the use of roaming services for purposes other than periodic travel (Guidelines 33 to 46) and after alerting its customer (Guidelines 148 to 154), the roaming provider may apply a surcharge, provided that the usage pattern has not changed.

85. For the avoidance of doubt, this applies to all types of mobile retail offers including open data bundles and pre-paid tariffs. In line with chapter D (Guideline 42), the surcharge may be applied to those retail roaming service(s) where a risk of abusive or anomalous usage has been detected based on sufficient evidence.

*The roaming provider has substantiated evidence that a number of SIM cards have been the object of organised resale*

86. In accordance with Article 4 (5) CIR, when a roaming provider has substantiated evidence that a number of SIM cards have been the object of organised resale to persons not effectively residing in or having stable links in the Member State of the roaming provider (as discussed in Guideline 47), the roaming provider may take

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<sup>10</sup> Commission Delegated Regulation (EU) 2021/654 of 18 December 2020 supplementing Directive (EU) 2018/1972 of the European Parliament and of the Council by setting a single maximum Union-wide mobile voice termination rate and a single maximum Union-wide fixed voice termination rate: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2021.137.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2021.137.01.0001.01.ENG)

immediate and proportionate measures in order to ensure compliance with all conditions of the underlying contract.

87. In such circumstances, the roaming provider shall notify to the NRA the evidence characterising the systematic abuse in question and the measure taken to ensure compliance with all conditions of the underlying contract. Such a notification should be made at the latest at the same time as such measures are taken. In practice, the full details of such notifications, if and where needed, could be provided on a monthly basis for reasons of practicality and to prioritise actions to combat any such fraud. BEREC notes that there might be additional notification obligations under the Directive (EU) 2018/1972 in relation to network security issues.

88. BEREC considers that, in the described circumstances, one of the measures that the roaming provider may apply to ensure compliance with the terms of the underlying contract is the application, to the SIM cards in question, of surcharges on retail roaming services.

89. For the avoidance of doubt, the above applies to all types of mobile retail offers, including open data bundles and pre-paid tariffs, as well as to all mobile retail roaming services.

*Actual roaming data usage exceeds the minimum roaming data allowance for the open data bundle*

90. In case of c (see Guideline 77) and apart from unlimited tariffs, the following types of open data bundles exist:

- (i) bundles for which the minimum roaming data allowance (calculated in accordance with Article 4 (2) CIR) is greater than the domestic data allowance;
- (ii) bundles for which the minimum roaming data allowance (calculated in accordance with Article 4 (2) CIR) is lower than the domestic data allowance.

91. In case of (i) (see Guideline 90), roaming customers shall be able to consume roaming volumes at the domestic retail price to at least the full amount of the domestic data allowance. Once the domestic data allowance is exceeded, the customer could either buy an add-on with additional volumes (in which case the same principle as for the basic tariff applies), or the domestic out-of-bundle price applies until the roaming data allowance is reached. Only after the roaming data allowance is exceeded, roaming providers may apply a surcharge in addition to the domestic retail price.

92. In case of (ii) (see Guideline 90), the roaming customer shall be able to consume at the domestic retail price at least the roaming data allowance (in line with Guideline 63), which in this case will be lower than the domestic data allowance of the open bundle. A surcharge may be applied after the roaming data allowance is exhausted.

*The actual roaming data usage exceeds the data roaming volume limit associated with the pre-paid credit of the customer.*

93. In the case of d (see Guideline 77), roaming surcharges may be applied to data roaming services by the roaming provider for volumes exceeding the limit of data roaming volumes calculated in accordance with Article 4 (3) CIR associated with the remaining credit of the customer.



94. For example, a pre-paid customer has a remaining credit of 20 euro (excl. VAT) when first starting to roam in a Member State. The pre-paid tariff of the given customer includes a data unit price of 0.05 euro cents (excl. VAT) per MB. In this example, the customer would be able to consume up to 40 GB of data domestically. Assuming a wholesale data cap of 2 euro per GB, the roaming provider may limit data roaming volumes for this customer to 10 GB in accordance with Article 4 (3). In this case, the roaming customer may consume up to 10 GB of data at the domestic retail prices. If that is the case, it would be debited by the amount of 5 euro for that consumption of data roaming services (10 GB multiplied by 0.5 euro per GB is equal to 5 euro). For any consumption of data roaming exceeding 10 GB, the roaming provider may apply roaming surcharges.

#### ***F. Alternative tariffs***

95. In accordance with Article 8 (2) Roaming Regulation, alternative tariffs are tariffs for regulated roaming services that can be offered in addition to the regulated tariffs set forth in Articles 4, 5 and 6 Roaming Regulation. These alternative tariffs can also include contractual conditions for roaming services that do not comply with Articles 4 and 5 Roaming Regulation.

96. BEREC considers that Article 8 (2) Roaming Regulation gives any roaming provider the option to offer, and any customer the option to deliberately choose, a roaming tariff other than RLAH. If roaming customers explicitly decide to opt for an alternative tariff, they have to be informed (e.g. via SMS, via the monthly bill, etc.) about the nature of the roaming advantages which would thereby be lost. Alternative tariffs could be bundles of roaming services for a fixed price, per-unit price, roaming allowances covering countries outside the Union, etc.

97. BEREC considers that an alternative tariff should not entail conditions or restrictions pertaining to elements of the subscription other than roaming. In other words, the alternative tariff may only affect the conditions of the roaming service offer within and outside the Union, and cannot affect other elements of the subscription (e.g. the price of the domestic subscription, other offers within the subscription such as for example handset subsidies, domestic service allowances, etc.). If the alternative tariff changed the conditions of the domestic tariff, the corresponding conditions of the RLAH tariff would also change and this would not be compliant with Article 8 (2) and Article 4 Roaming Regulation. A declaration of the domestic tariff as an alternative tariff does not change the principle of RLAH.

98. The purchase of an add-on to be able to consume additional volumes is subject to the rules on open data bundles applied to this new add-on, and will not lead to the conclusion that the customer has chosen an alternative tariff.

99. According to Article 13 (4) subparagraph 2 Roaming Regulation, roaming providers shall send a reminder at reasonable intervals to all customers who have opted for an alternative tariff. BEREC considers that every 12 months would constitute a reasonable interval, or any other shorter period associated with an earlier contract renewal or revision. In addition, BEREC considers that the entry into force of the recast of the Roaming Regulation would be a good occasion to inform customers subscribed to an alternative tariff about the possibility to switch to the default RLAH tariffs.

### ***G. Transfer between roaming tariffs***

100. According to Article 8 (2) Roaming Regulation, roaming providers must apply the tariffs set in accordance with Articles 4 and 5 and Article 8 (1) Roaming Regulation (i.e. RLAH) to all existing and new roaming customers (subject to the stable link and normal residence provisions in accordance with Article 4 (1) CIR) automatically. Roaming providers may however offer other tariffs for roaming as an alternative to the regulated roaming services and customers may deliberately choose those alternative tariffs (chapter F Guidelines 95 to 99). To this end, BEREC understands that existing customers with alternative tariffs have deliberately opted for such a tariff, if they have not indicated otherwise, and should therefore remain with these tariffs. New roaming customers that have not expressed their preferences at the time of the signing of the contract must automatically be directed to the regulated roaming tariff (i.e. RLAH).

101. A switch from or to a regulated roaming tariff set according to Articles 4, 5 and 8 (1) Roaming Regulation to or from an alternative tariff is covered by Article 8 (2) subparagraph 3 Roaming Regulation. Switching must be possible free of charge and within one working day, and must not entail conditions or restrictions pertaining to elements of the subscriptions other than roaming (for instance, a lower domestic data allowance or a higher domestic price). A roaming provider may delay a switch until the previous tariff applied when roaming has been effective for a minimum specified period not exceeding two months.

102. Should roaming providers make changes to their roaming-enabled tariffs which are not required for achieving compliance with the provisions of the Roaming Regulation, customers are entitled to withdraw from their contracts in accordance with the end user provisions of the Directive (EU) 2018/1972 and/or the national legislation.

### ***H. Tariffs without roaming services***

103. BEREC considers that the Roaming Regulation does not oblige providers to offer roaming services in their tariff plans. However, according to Article 4 (1) Roaming Regulation, roaming providers shall not levy any general charge to enable the terminal equipment or service to be used abroad. Providers should therefore not offer roaming options (against a general charge) separately in addition to subscriptions without roaming (see Guideline 9 and 10). If the provider decides to offer roaming in a tariff plan, it has to fulfil all the requirements of the Roaming Regulation as set out in chapters B, C and D.

104. Switching between tariffs with or without roaming services should follow the same procedures as switching between other ordinary tariffs in the Member State. Only the customer should initiate the switching and should also give active consent prior to any switch taking place. Mechanisms for simple and quick switching between tariffs with or without roaming should not be used to circumvent the Roaming Regulation.

### ***I. Charges for emergency services***

105. Article 109 of Directive (EU) 2018/1972 grants to all end-users the right to access to emergency services, free of charge, through emergency communications to the most appropriate public safety answering point (PSAP). In order to ensure that, roaming providers shall not levy on roaming customers any charges related to any type

of emergency communications to the most appropriate PSAP initiated by the roaming customer or to the transmission of caller location information.

106. Emergency communications include calling the single European emergency number '112', as well as alternative means of access to emergency services through emergency communications, in particular for roaming customers with disabilities, which are mandated in each Member State and are appropriate for use by roaming customers.

#### ***J. Charges for voicemail messages and SMS received***

107. Article 8 (1) subparagraph 3 Roaming Regulation prohibits charges (including any surcharge) for voicemail messages that are deposited in the roaming customer's network mailbox by another caller and for any regulated SMS received.

108. The roaming provider is not prevented from levying "other applicable voicemail charges", for example when the roaming customer listens to a message on their network mailbox. The transfer of any voicemail messages that have been left in a mailbox which is not the customer's network mailbox, for example when the customer uses personal numbering, should be considered a different service to the one described in Article 8 (1) subparagraph 3 Roaming Regulation.

#### ***K. Charges in currencies other than the euro***

109. The caps set out in Article 8 (1 a) Roaming Regulation incorporate the wholesale caps set out in Articles 9 (1), 10 (1) and 11 (1) Roaming Regulation. When converting these caps to currencies other than the euro, providers should use the method set out in Article 1 (4) Roaming Regulation. This means that the values shall be determined by applying the average of the exchange rates published by the European Central Bank in the Official Journal of the European Union (OJEU) on 15 January, 15 February and 15 March of the relevant calendar year<sup>11</sup>.

110. This means that from 1 July 2022, the average of the exchange rate published on 15 January 2022, 15 February 2022 and 15 March 2022 should be used. The same exchange rates should be used for converting the new wholesale price for data roaming services applicable from 1 January 2023.

111. According to Article 1 (4) the annually revised limits in national currencies shall apply from 15 May. For example, for the period 15 May 2023 – 15 May 2024, the average of the exchange rates published on 15 January, 15 February and 15 March 2023 should be used. This means that for the case of glide path (i.e. price caps for data services), the conversion with the new average exchange rate will take place four and a half months after the price decreases on 1 January of each year of the glide path. The same applies for voice and SMS in 2025, when the price cap for these services decreases.

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<sup>11</sup> In exceptional cases, there might be exchange rates for two dates published in the OJEU at the same date. In such cases, there are no specific method defining which of the exchange rates to be used. BEREC considers that for example using the exchange rate for the date closest to the 15th of January, 15th of February or 15th of March, or the average of the exchange rates of the two dates, would both be viable options and should be for the NRAs to decide, case by case.

112. As stated in Recital 13 Roaming Regulation, if there is no publication on the date specified, the applicable reference exchange rates should be those published in the first OJEU following that date and containing such reference exchange rates.

113. The Roaming Regulation does not specify rules for the number of decimals that are permitted or the rounding method. The maximum retail surcharges set out in Article 8 (1) and the wholesale average charges for voice, SMS and data may be calculated without rounding or cutting the decimals. 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 practice is not compulsory. In this instance, BEREC considers that the numbers should be rounded down. Rounding up of these numbers to above the level of the relevant cap should not be accepted. VAT could be included based on the maximum number of decimals before rounding down the total charge (including VAT).

114. The surcharge cap in Article 8 (1 b) Roaming Regulation is the single maximum Union-wide mobile voice termination rates set for that year. The method for converting the cap should follow Article 3 (3) of the Delegated Regulation (EU) 2021/654<sup>1</sup>, where the maximum termination rates denominated in currencies other than the euro shall be revised annually and updated by 1 January each year, using the most recent average of the reference exchange rates published on 1 September, 1 October and 1 November by the European Central Bank in the OJEU.

115. When determining the financial or volume limit on data roaming use (Article 14 (4) Roaming Regulation) in currencies other than the euro, the methodology used for converting retail charges described in Article 1 (4) should apply as the limit is related to retail price regulation, i.e. an average of the exchange rates published on 15 January, 15 February and 15 March should be used.

#### ***L. Charging intervals***

116. The Roaming Regulation provides maximum charging intervals for regulated wholesale and retail roaming voice calls and data sessions.

117. Article 8 (1) subparagraph 4 Roaming Regulation may not be clear as to whether the per-second and per-kilobyte (respectively, for voice calls and data services) charging interval shall be applied for both the domestic retail price component and the roaming surcharge or only for the roaming surcharge. The intention of the Roaming Regulation is to have the same prices for roaming and domestic retail services. However, applying the regulated charging interval to the domestic price component of a roaming tariff may force roaming providers to apply different charging intervals for retail roaming services and domestic retail services. BEREC therefore considers that roaming providers should be allowed to apply the charging intervals laid down in Article 8 (1) subparagraph 4 Roaming Regulation only to the roaming surcharges in order to achieve RLAH pricing. Nevertheless, roaming providers could also apply the same charging intervals to the domestic retail price component.

118. Similarly, roaming providers can decide to apply the charging intervals according to Article 8 (1) subparagraph 4 Roaming Regulation also to the domestic retail price component as the price for the retail roaming service, even where no roaming surcharge is applied.

119. SMS must be billed per message at the wholesale and retail level. BEREC considers that a roaming SMS should have the same technical parameters as a domestic SMS.

### ***M. Transparency measures***

#### ***a) Automatic message***

120. All customers are entitled to receive an automatic message, free of charge, providing personalised pricing information, information about value-added services, emergency communications and public warning mobile applications (when relevant) when the customer enters the visited country. The automatic message including basic roaming information should be personalised to that customer (Articles 13, 14 and 15 Roaming Regulation). BEREC considers that personalised information should be sent to all customers including those subscribed to an alternative tariff.

121. According to Article 13 (1) Roaming Regulation, roaming providers have to provide customers with disabilities with the basic personalised pricing information by voice call, free of charge, if they so request.

122. The personalized pricing information should be sent to roaming customers travelling within Union, outside the Union or when customers connect to national or international non-terrestrial public mobile communications networks.

123. Providers are required to send the basic personalised pricing information to the customer '*without undue delay and free of charge*' when they connect for the first time to a network other than that of their home provider when travelling abroad (Article 13 Roaming Regulation) or each time a customer crosses a border of a country outside the Union. This ensures that customers are informed of the roaming charges before they use those roaming services.

124. In addition, pursuant to Article 14 Roaming Regulation, information on data roaming, which includes MMS, should be delivered every time the roaming customer connects to a visited network and initiates a data roaming service in that visited country for the first time. When the customer continues travelling from one visited country to another, such tariff information is required to be sent to the customer unless the prices are the same. In such a case, BEREC understands that this provision requires only notifying the customer once when the customer enters another visited country.

125. For users of laptops with dongles or similar devices, connection to the visited network and initiation of the data roaming session are simultaneous. The domestic network is only able to tell that the user has connected to a visited network when the data roaming session has commenced. Therefore, the roaming provider should send one message to provide all of the required information. This could for instance be provided free of charge on a landing page (displaying price information) that opens when a data roaming session is initiated and before any data transfer (that is subject to a charge or a FUP) takes place.

126. A connection to the visited network and initiation of a data roaming session are not necessarily simultaneous as customers may use voice and SMS services but connect to data roaming at a later stage, if at all. In all cases, customers have to be informed as soon as their handsets connect to a visited network and subsequently as soon as they first initiate data roaming.

127. For data roaming, the information must be sent directly to the customer's mobile device, irrespective of the type and the form of the device (e.g. smartphone, tablet, a laptop with a dongle, etc.) For this service, the means of sending the information could be for example via SMS, e-mail or a pop-up window. The information should be delivered 'by an appropriate means adapted to facilitate its receipt and easy comprehension' (Article 14 (2) Roaming Regulation). The information must be provided free of charge in a way that does not require the customer to use a paid data roaming service in order to access it. This could be managed via SMS, a free-of-charge landing page or any other means.

128. Customers have the possibility to opt out of receiving personalised pricing information on the charges for regulated roaming services and/or having access to a free of charge facility providing information on the accumulated data consumption, as well as the right, at any time and free of charge, to require the roaming provider to provide the information again. BEREC notes that roaming providers will also continue to be required to provide certain information to customers roaming within the Union, outside the Union and customers connected to national or international non-terrestrial public mobile communications networks. An opt-out is not possible for the information about emergency communications and public warning mobile applications (when relevant).

129. The roaming provider must include the following basic information in the automatic message sent to roaming customers (where applicable in the currency of the home bill):

- Clarification that the domestic retail price applies for roaming in the Union (if necessary, also alerting the customer that calls and SMS will be charged on off-net tariffs) or information about the applicable roaming prices which apply outside the Union or on non-terrestrial networks (the latter will be provided when a customer connects to a non-terrestrial network);
- information on the FUP which the roaming customer is subject to, and any surcharges which apply in excess of the FUP (only within the Union, including VAT);
- information on any surcharges applied in accordance with Article 6 (sustainability derogation);
- a free-of-charge number from which the customer can obtain more detailed personalised information on regulated and unregulated voice calls, SMS, or data roaming services (including MMS), information on the application of the FUP and any surcharging and information on the transparency measures in the Roaming Regulation, by means of a voice call or an SMS (only within the Union);

- information about the potential risk of increased charges associated to roaming communications addressed to certain numbers which are used for providing value-added services, for example premium-rate numbers, freephone numbers or shared cost numbers and a link to access, free of charge, a dedicated webpage providing information about the types of services that may be subject to increased cost (only within the Union, see also Guideline 146);
- information about the possibility of accessing the emergency services by dialling 112 free of charge (only within the Union).

130. Regarding the FUP, roaming providers must provide information about the roaming data allowance if the customer is subject to such a limit (in the case of open bundles and pre-paid tariffs including the specific roaming data allowance in MB or GB) For pre-paid tariffs, the absolute roaming data allowance is affected by the consumption of calls and SMS, so more general information laying down that a fair use limit might apply depending on the consumption and followed by a link to where the customer can find more relevant information, could be preferable. Additional information on control mechanisms etc. could be provided via a free accessible landing page or a webpage.

131. Roaming providers are encouraged to include additional information in this message, such as the domestic charge which applies to the specific customer according to the applicable tariff plan, whether the receipt of voicemail messages when roaming outside the Union or when connected to non-terrestrial public mobile communications networks incurs a charge (and what it is if applicable), and charging intervals if they are different when roaming in the Union.

132. As of 1 June 2023, the following additional information must be provided in the automatic message (only within the Union):

- a link to access, free of charge, a dedicated webpage accessible to persons with disabilities, describing, in an easily understandable way and in the language in which the roaming provider communicates with the roaming customer, the alternative means of access to emergency services in the visited Member State, and indicating only those means of access that are technically feasible for use by roaming customers.

133. BEREC considers that, if a public warning mobile application for the receipt of public warnings is reported in the database for a Member State under Article 16, the automatic message received in that Member State should indicate that the application enabling the receipt of public warnings may be downloaded from the link provided to the webpage. More detailed information, such as the link to the app, shall be included in the dedicated webpage (see Guideline 146).

134. Where a customer roaming within the Union contacts the home provider requesting further detailed information, the provider should ensure that the information on the prices of roaming voice calls and SMS (Article 13 (2) Roaming Regulation) is immediately available for that customer, regardless of the time of day. If using automated machines to comply with this obligation, the home provider should ensure that the customer can quickly and easily access the required personalised information. In addition, in line with Article 13 (2) Roaming Regulation, contacting the home provider

should be free of charge. Furthermore, if contacted via SMS, it would be reasonable for the roaming provider to send only essential personalised pricing information about charges for voice calls, SMS and data services (including MMS) to its customers where the details of the charges are complex.

***b) Information requirements for contracts and after conclusion of a contract***

135. All terms and conditions associated with a regulated retail roaming service, including a FUP, should be included in contracts with roaming customers according to Article 8 (3) and (4) Roaming Regulation and Article 5 CIR. This includes all terms and conditions relating to requests of proof of normal residence or stable links pursuant to Article 4 (1) CIR.

136. Pursuant to Article 8 (3) subparagraph (b) Roaming Regulation, roaming providers must provide information about any restrictions imposed on regulated roaming data volumes provided at the domestic retail price in the contracts. This must be provided in a clear and comprehensible manner. Provided that the national legal provisions do not require more detailed information to be included in the contract, BEREC considers that roaming providers could also provide the information on the actual roaming data allowance in other simple and easy accessible ways (e.g. via mobile app or via the client area of the website) than the contract, provided that the contract specifies how that limit shall be determined, together with other pricing information for the actual subscription. The minimum roaming data allowance must be updated each time the retail price for the subscription changes and each time the regulated maximum wholesale data roaming cap changes.

137. Roaming providers may apply FUPs according to Article 5 Roaming Regulation to prevent abusive or anomalous usage of regulated roaming services. Depending on the application of any FUP in accordance with the CIR, roaming providers have to inform their customers and include the conditions of the FUP in contracts. Transparency in this regard is required to help customers understand the applicable restrictions, the calculation of roaming volumes and complaint procedures. As the requirements for contract information differs depending on the applicable FUP, see chapter D for the corresponding transparency specifications.

138. According to Article 8 (3) Roaming Regulation, without prejudice to Part III, Title III of Directive (EU) 2018/1972, roaming providers must ensure that a retail contract which includes any type of regulated retail roaming service specifies the characteristics of that regulated retail roaming service provided, including in particular:

- The specific tariff plan or tariff plans and, for each tariff plan, the types of services offered, including the volumes of communications as required by Article 8 (3 a) Roaming Regulation;
- any restrictions imposed on the consumption of regulated retail roaming services provided at the applicable domestic retail price level, in particular quantified information on how any FUP is applied by reference to the main pricing, volume or other parameters of the provided regulated retail roaming service concerned, as set out by Article 8 (3 b) Roaming Regulation;



- clear and comprehensible information on the conditions and the quality of the roaming service when roaming within the Union in accordance with Article 8 (3 c) Roaming Regulation. This includes information about the expected level of QoS, information on the ways in which the QoS may differ from services consumed domestically, and an explanation of relevant factors (such as availability of technologies, coverage, topography, etc.) that can affect the QoS (such as the speed, latency and availability of roaming services) while roaming in other Member States. BEREC considers that the contract shall include basic information about the points mentioned above and a link to the website that includes more detailed information (see Guideline 145);
- information about the types of services that may be subject to increased charges when roaming, without prejudice to Article 97 of Directive (EU) 2018/1972, as prescribed by Article 8 (4);
- information about the complaints procedure that is available where the QoS does not correspond to the terms of the retail contract (see Guideline 141).

139. The relevant information for customers should be kept simple and cover roaming situations in the Union in a general way. It should be clear and comprehensible. Therefore, information about regulated roaming services could be provided in the contract summary template<sup>12</sup> in the section “services and equipment”, which shall include, where applicable the volume or quantity for calls, messages and data and the roaming FUP applied by the provider and in the section “other relevant information” subject to the usage of regulated roaming services.

140. As the transparency provisions with regard to information on the conditions and the quality of regulated roaming services are positive for customers and required by the Regulation mandatory, BEREC is of the view that changes in existing contracts in this regard may not cause an extraordinary contract termination (see also Recital 34 Roaming Regulation).

141. With a view to empowering roaming customers, the Roaming Regulation according to Recital 35 foresees complaints procedures in cases where the QoS does not correspond to the terms of the retail contract. Therefore, roaming providers should include clear and comprehensible information about a complaint procedure in contracts, and handle complaints in that regard in a timely manner. Where roaming providers have implemented a FUP, BEREC encourage roaming providers to efficiently merge the FUP and the QoS complaint procedure.

142. BEREC considers that the information specified in Article 8 (3) and (4) Roaming Regulation should be provided in contracts that include any regulated retail roaming services, in a clear and understandable way and taking into account obligations in national legislation regarding communications services contracts. BEREC considers that the above mentioned information should be personalised and indicate clearly the

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<sup>12</sup> Commission Implementing Regulation (EU) 2019/2243 of 17 December 2019 establishing a template for the contract summary to be used by providers of publicly available electronic communications services pursuant to Directive (EU) 2018/1972 of the European Parliament and of the Council (Text with EEA relevance).

pricing of the regulated retail roaming services which are applied to the specific customer and which the customer has subscribed to.

143. Customers should be able to monitor and control their expenditure on regulated data roaming services according to Article 14 (1) Roaming Regulation. Roaming providers should ensure that their roaming customers are kept adequately informed of data roaming charges in ways that facilitate the customers' understanding of the financial consequences of their use. BEREC considers that every six months would constitute a reasonable interval, or any other shorter period associated with a contract renewal or revision. The Roaming Regulation also provides that, where appropriate, providers must inform their customers before the conclusion/agreement of a contract, and on a regular basis thereafter, of the risk of automated and uncontrolled data roaming connections and downloads. They must also explain, free of charge and in a clear and easily understandable manner, how to switch off automatic data roaming to avoid uncontrolled consumption of data roaming services. Roaming providers may meet these requirements by providing clear and easily accessible information in their terms and conditions for the service on their website and/or in other sources.

144. Roaming providers must also provide their roaming customers with updates on applicable roaming charges or prices without undue delay each time there is a change in accordance with Article 13 (4) Roaming Regulation. This means that the full information on applicable charges must be provided before a contract commences and each time a roaming provider makes changes to its roaming pricing, including when it is required by national law.

***c) Information to be provided by roaming providers on their websites***

145. As of 1 July 2022, the roaming provider shall include the following information on its website:

- Each tariff plan and the types of services offered, including the volumes of communications;
- any restrictions imposed on the consumption of regulated retail roaming services, in particular quantified information on how any FUP is applied by reference to the main pricing, volume or other parameters of the provided regulated retail roaming service concerned;
- information on the types of services that may be subject to increased charges when roaming in the Union, such as communications to certain numbers which are used for providing value-added services, for example premium-rate numbers, freephone numbers or shared cost numbers;
- additional information about QoS, which should include the following:
  - For each country in the Union and per available visited network information, in a clear and comprehensible manner on the available network generations and technologies,
  - information provided in a clear and comprehensible manner on the following topics:

- a. Basic information on the reasons why the advertised or estimated maximum upload and download speeds when roaming can deviate from the speed available domestically and how such deviations may impact the roaming service.
  - b. How QoS parameters (such as speed, available network generations and technologies, latency etc.) may impact the usage of data roaming services.
  - c. How specific types of content, applications or services may be impacted during roaming.
- Information on how to effectively avoid inadvertent roaming in border regions as set out by Article 14 (6) Roaming Regulation and roaming on non-terrestrial networks.
146. As of 1 June 2023, the roaming provider's website shall include additional information about:

- the alternative means of access to emergency services in the visited Member State and indicating only those means of access that are technically feasible for use by roaming customers as included in the BEREC database established pursuant to Article 16 (1) subparagraph (b) Roaming Regulation as well as information about the use of public warning systems, when relevant.
- numbering ranges for value-added services subject to increased costs and information about charges applicable to freephone numbers while roaming, if any (Article 13 Roaming Regulation). Where applicable, this could include also other relevant additional information included as part of the database established pursuant to Article 16 Roaming Regulation, for example about the tariffs associated with numbering ranges for value-added services, such as per minute or per act tariffs. Such tariff information could be made available on the dedicated webpage providing information about value-added services (Recital 59 Roaming Regulation).

***d) Transparency measures when exceeding the FUP***

*Notification on consumption within a FUP concerning a volume limit on data*

147. Pursuant to Article 14 (3) Roaming Regulation, the roaming provider must send a notification to the roaming customer when the applicable fair use volume of data roaming services is fully consumed or any usage threshold applied is reached. The notification must indicate the surcharge that will be applied to any additional consumption of regulated roaming services by the roaming customer. Each customer must have the right to require the roaming provider to stop sending such notifications and must have the right, at any time and free of charge, to require the roaming provider to provide the service again.

*Alerting the customer of a pending surcharge based on the objective indicators*

148. In order to prevent abusive or anomalous use (such as the use of roaming services for purposes other than periodic travel), the roaming provider must alert the

customer before applying any surcharge on the basis of the objective indicators set out in Article 4 (4) and (5) CIR. The roaming provider must inform the customer of an alert period no shorter than two weeks, and in the absence of a change in the usage pattern within that alert period, the provider may apply a surcharge for any further use after the date of the alert (Article 5 (4) CIR). The surcharge, which is subject to Article 8 Roaming Regulation, should be specified in the alert. If the usage pattern does not change within the alert period, the provider may apply a surcharge to any further use during and after the alert period, beginning after the date of the alert, in accordance with the terms of the applicable FUP. The customer should be informed when surcharging begins. BEREC considers it good practice not to bill the surcharge (in case a billing period ends during the alert period) until after the alert period ends and no relevant change in the usage pattern has been observed. That way, there is no need for the provider to refund already billed surcharges in the event that the usage pattern of the customer did change after the bill was sent or in the event of a dispute between the provider and the customer being resolved in favour of the latter.

149. Following the roaming provider's alert, the roaming customer may seek to clarify or contest the roaming provider's conclusion that there is a risk of abusive or anomalous use of roaming services beyond periodic travelling, in accordance with the complaints procedures relating to the application of its FUP that the roaming provider shall put in place and via any dispute resolution procedures established in the Member State of the roaming provider, as stipulated in Article 5 (1) CIR. Such complaint mechanisms and dispute resolution procedures shall permit the roaming customer to provide evidence that they are not using the regulated roaming retail services for purposes other than periodic travel, in response to the roaming provider's alert.

150. In accordance with Article 5 (3) subparagraph 2 CIR, where the risk of abusive or anomalous use results from the non-fulfilment of both the prevailing domestic consumption and the prevailing domestic presence during the observation window of at least four months, the resolution of such complaint or dispute shall take into account additional indications of risk of abusive or anomalous use (such as the use of roaming services for purposes other than periodic travel) arising from the overall non-domestic presence or usage of the roaming customer. For example, a case where the non-domestic presence and usage of the roaming customer is only slightly in excess of 50% over the observation window, and the roaming customer provides substantial evidence covering a longer period, including the future, of residence in or stable links with the country of the roaming provider, could be assessed differently to one where the roaming customer has spent by far the greater part of the observation window abroad and submits little or no additional evidence.

151. In line with chapters D (Guideline 42) and E, the surcharge may be applied to those retail roaming service(s) for which a risk of abusive or anomalous usage such as the use of roaming services for purposes other than periodic travel has been detected.

152. BEREC notes that the minimum alert period of two weeks also applies when the alert is based on the other objective indicators discussed in Guidelines 43 to 46.

153. BEREC considers that the change required in the usage pattern within the alert period to prevent the roaming provider from applying the surcharge must address the observed risk of abusive or anomalous use on the basis of which the customer was

alerted. BEREC generally considers as a change of usage pattern if the customer fulfils the prevailing domestic consumption or prevailing domestic presence criteria with regard to the alert period of at least two weeks.

154. According to Article 5 (5) CIR, surcharging on the basis of risk of abusive or anomalous use must end as soon as the customer's usage no longer indicates a risk based on the objective indicators referred to in Article 4 (4) CIR. The roaming provider must cease to apply the surcharges as soon as either one of the prevalence (presence or consumption) criteria are fulfilled. To establish such a change in the usage pattern and for the roaming provider to be confident that there is a clear indication of no risk of abusive or anomalous use after the alert period, the roaming provider should continue to monitor the customer's consumption and presence in the same manner as it did until prior to the alert.

155. The possibility to apply a roaming fair use policy should not be exploited by roaming providers to the detriment of roaming customers engaged in any form of periodic travel (Recital 4 CIR).

***e) Financial or volume limit on data roaming consumption***

156. Article 14 (4) Roaming Regulation requires roaming providers to make available to their customers one or more maximum financial or volume limits on data roaming use during an agreed specified period ("cut-off mechanism"). This is intended to enable customers to avoid running up bills that are higher than intended or expected. BEREC considers that providers may construe customer to mean the contracting party or an individual SIM holder (who may not be the same person in the case of corporate or family contracts, for example). Providers must make it clear (e.g. in the contract, on the website and in other appropriate ways) to whom the cut-off limit applies, i.e. the contracting party or individual SIM card holders.

157. The cut-off mechanism set out in Article 14 (4) Roaming Regulation also applies to roaming data services provided outside the Union and when connecting to non-terrestrial public mobile networks.

158. The implementation of RLAH minimises the risk of bill-shock for most customers roaming in the Union. Customers who pay in advance for a fixed, pre-defined non-recurring sum and non-recurring duration, after which the data session ends unless and until the customers give their express consent to resume data access, are automatically protected from bill-shock both in their home country and abroad, and there is no need to make special arrangements for them. This meets the policy intention behind the cut-off limit, because customers are unable to spend more than they have consented to before starting the connection, thus giving them control.

159. BEREC considers the following cases to be suitable for a cut-off limit:

- use of post- and pre-paid metered roaming tariffs or
- when a surcharge is applied to the domestic price according to chapter E.

160. BEREC considers it good practice to notify the customers when they reach the limit of the domestic bundle. This notification should be given to the customer when reaching the default limit while roaming.

161. Roaming providers must apply the default financial limit or default volume limit automatically to all customers who have not already chosen a specific different limit. It is considered good practice that providers explain, on their website and in customer communications material or by other means, how the cut-off mechanism will work. This must include an explanation of how to consent to use the roaming service in excess of the limit if wished, and what will happen to any data in the course of being downloaded, if the customer does not wish to continue the use when the limit is reached. BEREC considers it good practice that customers who have permanently opted out of the cut-off limit are provided with information on their consumption on a regular basis to prevent them from bill shocks.

162. The default financial limit must be close to, but shall not exceed 50 euro of outstanding charges per monthly billing period (excluding VAT). The default volume limit should have a corresponding financial limit not exceeding 50 euro of outstanding charges per monthly billing period (excluding VAT) which should automatically refresh every billing period. For the default financial limit, providers must make the customer aware of the corresponding amount in volume terms in advance. Note that the limit relates to the accumulated expenditure per specified period, and not per data session.

163. BEREC understands that 'monthly billing period' may refer to a calendar month or another specified monthly period in which the service is billed.

164. The default or agreed financial limit per monthly billing period should be calculated cumulatively by the roaming provider in the case the roaming customer travels several times within the same period and potentially in different countries, including countries outside the Union or non-terrestrial public mobile networks.

165. BEREC understands that the financial or volume limit must be made available to customers with both post-paid and pre-paid tariffs.

166. In addition, providers may make available one or more other, higher or lower, financial or volume limit(s) for other specified periods of use (i.e. not necessarily per month, for example a daily or weekly limit could be offered); again provided the customer is made aware in advance of the corresponding volume or financial amount, respectively.

167. BEREC notes that MMS are included in the definition of 'regulated data roaming service' according to Article 2 (2) subparagraph (j) Roaming Regulation, and are not explicitly excluded from the scope of Article 14 (4) Roaming Regulation, when provided as a metered service. Providers should ensure that customers are informed about how any MMS expenditure is charged and controlled.

168. When a financial or volume limit is in operation, the Roaming 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. BEREC 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. Providers should ensure that the customer has time to use the notification to make an informed decision about their expenditure before the final limit is reached. In cases where the warning was not sent when customers reach 80% of their limit, providers should seek,

as a matter of good practice, to ensure that the customers do not suffer the consequences of high bills due to failure of timely warning.

169. According to Article 14 (4) subparagraph 7 Roaming Regulation, roaming providers are obliged to notify customers subject to a default financial limit or default volume limit when they consume more than 100 euro in a monthly billing period, excluding VAT. A notification is foreseen when consumption reaches 100 euro. This notification is in addition to the notifications of 80% and 100% of the default or agreed financial limit referred to in Guideline 164. BEREC considers a good practice, to also send a notification once 80% of the 100 euro limit is consumed.

170. Although the Roaming Regulation does not prescribe how the warning has to be sent to the customer's handset or other device, it must be 'appropriate'. BEREC expects this may be achieved by sending for example an SMS or an e-mail, or by opening a pop-up window on the device (Article 14 (4) Roaming Regulation). BEREC considers that customers should be informed by those means which will maximise their chances of receiving and being able to act upon the notification, bearing in mind the device and type of data service used, if they wish to continue using data beyond the limit.

171. BEREC expects that providers will wish to inform customers of how to continue using data services when the 80% warning notification is sent in order to give customers more time to plan and control their use and expenditure. Providers may also wish to indicate what will happen to any data in the course of being downloaded when the time limit is reached, if the customer does not wish to continue use beyond that point. If the customer decides to authorise data use beyond the financial or volume limit in response to the 80% warning notification, the original limit will be superseded, and it is no longer relevant to send a notification at the end of the original limit for the applicable specified billing period. BEREC considers that the consent of a customer is given only for the specified billing period.

172. Customers can require, free of charge, their provider to stop sending such notifications, or to start again.

173. 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 in the specified billing period. If the customer does not indicate otherwise, the provider must immediately stop providing and charging the service unless the customer makes a request for continuation or renewal of the service for the specified billing period pursuant to Article 14 (4) Roaming Regulation.

174. BEREC considers that the policy intention is not for data roaming services to be de-authorised or for customers to have to enter into a burdensome or lengthy process to resume data roaming use.

175. In all cases, charging should cease when the limit is reached, unless the customer has responded in due time to express that he/she does not wish the cut-off to be activated. BEREC encourages providers, where possible, to maintain the data connection for a reasonable period after the limit is reached in order to give most customers adequate time to receive and respond to the notification, for example by

suspending the connection or slowing speed down significantly. Depending on the type of device, data service and content, there may be a delay in the customer's reply, 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 window. If the customer indicates that he/she does not want to continue the data session, or remains silent throughout the "reasonable period" foreseen for a response, BEREC encourages roaming providers to facilitate any subsequent connection to the greatest extent possible, once the customer gives their consent to resume use. BEREC also expects that providers will make technically feasible efforts to preserve any data that was in the course of being downloaded for a reasonable period after the limit is reached, so as to allow the customer to resume the download.

176. Recital 51 Roaming Regulation states that the measures elaborated on further above should be seen as 'minimum safeguards for roaming customers', and do not prevent providers from offering additional transparency and bill control measures. BEREC notes that these may include flat-rate offers or real-time information on data consumption and encourages such additional measures.

#### ***N. Inadvertent roaming***

177. Inadvertent roaming occurs when a mobile device registers on a foreign network or a non-terrestrial network without this being the intention of the customer (e.g. when the customer is not travelling but located in a border area). Roaming providers should take all reasonable steps to reduce potential harm to customers from breaching FUP limits or indicators in the Union or surcharges when connecting to third country or non-terrestrial networks due to inadvertent roaming. These steps can include cross-border co-ordination on power levels, emission masks, receiver sensitivity, financial limits, mechanisms to opt out of roaming on a network outside the Union where technically feasible, etc. Recognising that radio signals do not respect borders, and in the event that technical measures alone cannot mitigate the effects of inadvertent roaming particularly in border areas, roaming providers can also consider implementing special tariffs, or Operator Determined Barring Mechanisms, for those customers living close to border areas to protect them from paying roaming charges for inadvertently accessed roaming services while situated in their home country. Roaming providers can also alert customers by SMS or request consent via device menu selection before allowing roaming for those customers affected. In any case, roaming providers should inform their customers about the measures for preventing inadvertent roaming (e.g. the manual selection of the operator when using the device near the border).

#### ***O. Non-terrestrial public mobile networks***

178. Non-terrestrial public mobile networks use radio access technologies, such as GSM/UMTS/LTE pico-cells combined with a satellite backhaul in order to provide services to passengers and crew. Examples of these networks may be mobile communications networks on board marine vessels (MCV services) as defined in



Commission Decision 2010/166/EU<sup>13</sup> or mobile communications networks on aircraft (MCA services) as defined in Commission Decision 2008/294/EC<sup>14</sup>.

179. The price caps on retail and wholesale level according to the Roaming Regulation do not apply to services provided by means of non-terrestrial public mobile networks (e.g. calls made to/from ships or planes using satellite networks). Therefore, roaming providers shall take all reasonable steps to protect their customers from paying additional charges for inadvertently connecting to non-terrestrial public mobile networks. This applies to voice calls and SMS as well as data services.

180. In order to enable customers to actively prevent such instances of inadvertent roaming, roaming providers should:

- take measures to ensure that adequate information is provided in a clear and comprehensible manner,
- inform their roaming customers about the possibility of manually and instantly opting out of roaming on their handset device, either through the settings or by activating flight mode, as put forward in Recital 46 Roaming Regulation,
- inform their roaming customers about any additional charges that apply when connecting to a non-terrestrial public network, by way of a free of charge text message sent each time a connection to such a network is established, see also chapter M section a).

181. Other safeguards and transparency measures could include network operation measures, financial limits, an opt-out mechanism or similar precautions. Where an opt-out mechanism is offered, the customer shall, according to Articles 13 (6) and 14 (7) Roaming Regulation, have the right to opt out of the use of non-terrestrial mobile networks at any time, easily and free of charge, and to request the reinstatement of the connection to such networks. An instant opt-in or reactivation of the service could be limited due to the risk that without connection to the home network, the customer will be unable to reactivate connection to the respective non-terrestrial mobile network. Roaming customers should be informed about these limitations in the contract and on the website.

182. To the extent possible, when planning and operating their networks, roaming providers should aim to prioritise connections to terrestrial networks to minimise the risk of inadvertent connection to non-terrestrial networks as set out in Recital 46

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<sup>13</sup> Commission Decision 2010/166/EU of 19 March 2010 on harmonised conditions of use of radio spectrum for mobile communication services on board vessels (MCV services) in the European Union. Commission Implementing Decision (EU) 2017/191 of 1 February 2017 amending Decision 2010/166/EU, in order to introduce new technologies and frequency bands for mobile communication services on board vessels in the European Union.

<sup>14</sup> Commission Decision 2008/294/EC of 7 April 2008 on harmonised conditions of spectrum use for the operation of mobile communication services on aircraft (MCA services) in the Community. Commission Implementing Decision (EU) 2013/654 of 12 November 2013 amending Decision 2008/294/EC to include additional access technologies and frequency bands for mobile communications services on aircraft.

Commission Implementing Decision (EU) 2016/2317 of 16 December 2016 amending Decision 2008/294/EC and Implementing Decision 2013/654/EU, in order to simplify the operation of mobile communications on board aircraft in the Union.

Roaming Regulation. Such a practice is particularly important when roaming within the Union.

183. According to the EC Recommendation 2010/167/EU on the authorisation of systems for MCV services,<sup>15</sup> Member States should take any appropriate measure in order to ensure that customers are adequately informed about the terms and conditions for the use of MCV services.

#### ***P. Value-added services (VAS)***

184. BEREC considers that in the context of the Roaming Regulation a value-added service (VAS) is any communication addressed to numbers such as premium-rate numbers, freephone numbers or shared cost numbers which, while roaming in the Union might be more expensive “than at home”. These VAS numbering ranges should be included in the database to be established by BEREC, according to Article 16 Roaming Regulation. For VAS, the charge for the voice call, SMS, or data transmission is bundled with the price of a specific service being purchased, e.g. weather forecast or a call to a hotline. The bundled price is fully billed by and paid to the roaming customer's roaming provider.

185. According to Recital 37 Roaming Regulation, the Roaming Regulation does not apply to the entire tariff that is charged for the provision of VAS, but only to the tariff component corresponding to the connection to such services. This would allow for applying the charges set out in Articles 4, 5, 6 or Articles 9 (1), 10 (1) and 11 (1) Roaming Regulation for voice calls, SMS and data services that are solely limited to the connection to such services and not the service of the content provider itself. Roaming providers should ensure that customers are informed about how any expenditure related to VAS is charged and controlled. This would complement the requirements for roaming providers to inform customers about the types of services that may be subject to increased charges through the retail contract (see also Guidelines 138, 145 and 146) and to implement the transparency measures related to VAS (see also chapter M section a).

186. For calls to any other VAS, e.g. where there is advance functionality added to the telephone service, but where there is no split charge between the connection to the service and the specific service, BEREC considers that the charges set out in Articles 4, 5, 6 or Articles 9 (1), 10 (1) and 11 (1) Roaming Regulation apply. Examples of such VAS are functionalities like queue management or call-back functionality.

#### ***Q. Handover between mobile communications networks***

187. According to Recital 27, operators should take reasonable measures to minimise any undue delay in handovers between mobile communications networks, without prejudice to Article 28 of Directive (EU) 2018/1972. National administrations and operators can conclude spectrum coordination agreements and ensure coverage, at least along 5G corridors and terrestrial transport paths (see BEREC Wholesale Guidelines – Guideline 25). Furthermore, in accordance with Article 4 (2) subparagraph 2 Roaming Regulation, mobile communication operators should avoid unreasonable delays in handovers between networks at internal Union border

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<sup>15</sup> Commission Recommendation 2010/167/EU of 19 March 2010 on the authorisation of systems for mobile communication services on board vessels.

crossings. BEREC however notes that in case of automatic handovers, it would be good practice for roaming providers to inform customers in the contract and on the website about the automatic handover and the impact on charging (e.g. international calls vs. roaming calls).

### **R. Machine-to-machine (M2M) communications**

188. Machine-to-machine (M2M) communications<sup>16</sup> are not excluded from the scope of the Roaming Regulation, including the provisions on fair usage of roaming services.

189. Although the Roaming Regulation makes reference to customers that travel periodically, it is common for devices for M2M communications to be used on a permanent roaming basis, and these communications are subject to the limitations on permanent roaming included in this Regulation. As these M2M communications may be subject to commercial negotiations at wholesale level and negotiating parties may agree not to apply maximum regulated wholesale roaming charges, this should be without prejudice to the obligations as regards the provision of regulated retail roaming services, such as the RLAH regime.

190. Pursuant to Article 14 (5) Roaming Regulation, the transparency provisions related to the provision of basic personalised tariff information on charges (Article 14 (2) Roaming Regulation) or financial limits (Article 14 (4) Roaming Regulation) do not apply to M2M devices which use mobile data communications.

### **S. Sustainability**

191. According to Article 6 (1) Roaming Regulation, in specific and exceptional circumstances, with a view to ensuring the sustainability of its domestic charging model, a roaming provider may apply for authorisation to apply a surcharge. The CIR lays down detailed rules on the methodology for assessing the sustainability of the abolition of retail roaming surcharges and on the application to be submitted by a roaming provider for the purposes of that assessment.

#### **a) Deadlines**

192. The sustainability surcharges should be granted for a period of 12 months. In order to renew the authorisation, the roaming provider must update the information and submit it to the NRA every 12 months pursuant to Article 6 (2) Roaming Regulation. NRAs shall authorise the surcharge within one month of receipt of an application, unless the application is manifestly unfounded or provides insufficient information, in which case NRAs shall take a final decision within a further period of two months. During this period, the NRA should give the roaming provider the opportunity to be heard, and should make a final decision authorising, amending or refusing the surcharge proposed by the roaming provider.

193. In case of an authorisation, roaming providers wishing to apply surcharges should comply with transparency rules (i.e. advance publication of price changes,

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<sup>16</sup> Definition in Recital 21 Roaming Regulation: M2M communications are services involving an automated transfer of data and information between devices or software-based applications with limited or no human interaction.

resolving contractual issues that guarantee an extraordinary right to terminate contracts, etc.) set out both at national level and in the Roaming Regulation.

**b) Requirements to apply for a derogation**

194. A roaming provider applying for an authorisation to apply roaming surcharges has to submit its estimated roaming retail net margin over a period of 12 months. Its projected roaming retail net margin, in case it is negative, will be compared to its projected mobile services margin. In case the absolute value of the roaming retail net margin is equivalent to 3% or more of the mobile services margin, the NRA will examine the specific circumstances mentioned in Article 10 (2) CIR in order to conclude whether a surcharge on regulated roaming services should be authorised. According to the definition of Article 2 (2 f) CIR, mobile services margin means earnings, before interest, tax, depreciation and amortisation, from the sale of mobile services other than retail roaming services. For the case of roaming providers offering both retail and wholesale mobile services, revenues and costs for both retail and wholesale services need to be captured in the mobile services margin estimation (for the avoidance of doubt, these would exclude retail roaming services).

195. The roaming retail net margin is the amount remaining after the costs of providing regulated retail roaming services are deducted from the revenues from providing such services. Cost and revenues should be determined according to the provisions of Articles 7, 8 and 9 CIR. According to Article 6 (2) CIR, any data on the applicant's costs and revenues shall be based on financial accounts, which shall be made available to the NRA and may be adjusted according to volume estimates pursuant to Article 6 (1) CIR. Where costs are projected, deviations from figures resulting from past financial accounts shall be considered only if supported by proof of financial commitments for the period covered by the projections. For the determination of the roaming retail net margin, revenues and costs should be estimated with regard to all regulated retail roaming services and not only to a few selected tariffs. The applicant shall provide all necessary actual and projected data that it has used to determine the projected mobile services margin and the overall actual and projected costs and revenues of providing regulated roaming services over the relevant period (actual and projected 12-month period for which the application is filed).

196. Regarding the actual data, as it is common practice among mobile operators to publish financial information every quarter, it may be more appropriate to submit actual data on costs and revenues for a 12-month period ending at one of the four quarters of the year. For example if an application is submitted in May 2023, actual data for the period 1 April 2022 to 31 March 2023, if available, should be submitted. If actual data for the period 1 April 2022 to 31 March 2023 is not available, then actual data for the period of 1 January 2022 to 31 December 2022 has to be submitted. The same holds respectively if actual data for the period 1 January 2022 to 31 December 2022 or for the most recent period is not available. In case the application examination period is extended by two months, in line with the provisions of Article 6 (4) Roaming Regulation, and in the meantime, more recent actual data becomes available, the applicant may include in its application this additional actual data. Regarding the projected data, the applicant should submit, in addition to the outcome of its projection, the inputs used to derive such projections and details of its projection methodology.

BEREC provides a list of items that an NRA could consider requesting to examine the sustainability of the domestic charging model:

- The template of Annex I (if needed the template could be modified by NRAs), filled in accordingly by the applicant, could be envisaged. The template covers the following actual and projected data/information:
  - output of the formulas included in Annex II CIR,
  - data used for the calculation of the formulas included in Annex II CIR,
  - costs provided for by Articles 7 and 8 CIR,
  - revenues according to Article 9 CIR,
  - calculation of the roaming retail net margin based on the previous calculations on costs and revenues,
  - calculation of mobile services margin (EBITDA), and
  - additional information according to Article 10 (2) CIR.
- Details on the projection methodology used for every projection (i.e. every line in the templates), referring to proof of financial commitment (if required).
- General ledger balances covering the transactions during the “actual” period, including the allocation of the amounts in the financial accounts to the applicant’s cost centres (i.e. parts of the organisation to which the costs are attributed for accounting purposes).
- Details on the link/allocation between the figures in the financial accounts and the figures in the templates.

197. An NRA may also require from the applicant an accountant’s declaration that the data is correctly drawn from its business systems and that the methodology for the projections has been followed consistently and correctly.

198. According to the definition in Article 2 (f) CIR, the EBITDA for mobile services should be calculated by ignoring the costs and revenues from retail roaming services. In case a roaming provider encounters difficulties in calculating the mobile services margin (i.e. the EBITDA) it may consider subtracting the roaming retail net margin calculated according to Articles 6, 7 and 8 CIR from the EBITDA of all mobile services provided by the roaming provider as a good proxy for the mobile services margin. In doing this, the applicant should not estimate the EBITDA of mobile services in such a way that it would result in a circumvention of the methodology described in Articles 6, 7 and 8 CIR to estimate the costs and revenues (and ultimately the net margin) of roaming services.

199. Taking into account Guideline 208, the applicant should also submit information on the level and the distribution of the roaming surcharges it proposes to apply in order to ensure the sustainability of its domestic charging model having regard to the fact that the level of the surcharges do not go beyond cost recovery.

**c) Assessment of the application**

200. In order to ensure the sustainability of its domestic charging model, the NRA may conclude that the applicant is unable to recover its costs of providing regulated retail roaming services, with the effect that the sustainability of its domestic charging model would be undermined, only where the negative roaming retail net margin of the applicant is equivalent to 3% or more of its mobile services margin pursuant to Article 10 (1) CIR or in case of a negative mobile service margin.

201. The roaming retail net margin shall be the amount remaining after the costs of providing regulated retail roaming services are deducted from the revenues from providing such services using the approach described in Articles 7, 8 and 9 CIR. In this regard, the NRA must review the approach used in the application to determine the roaming retail net margin to ensure compliance with the methodology for determining costs and revenues, as laid down in Articles 7, 8 and 9 CIR.

202. If the absolute value of the roaming retail net margin is equivalent to 3% or more of the mobile services margin, the NRA can refuse the surcharge where in specific circumstances there is proof of a sustainable domestic charging model. Such circumstances include situations described in Article 10 CIR.

203. First, NRAs should examine if an applicant is part of a group and the approach used in its application suggests that there is internal transfer pricing from/to other subsidiaries of the group in other Member States, in particular in view of a substantial imbalance of wholesale roaming charges applied within the group. In such cases, the NRA may conclude that the share of costs attributed to the applicant is disproportionately large (when compared to other subsidiaries of the group) and the NRA may refuse to grant the possibility of applying sustainability surcharges. Second, the NRA should examine the degree of competition in domestic markets in order to assess whether the level of profit margins is such that companies in the domestic market are more likely to absorb the negative roaming retail margin than to increase domestic prices. Third, the NRAs shall make sure that any assumptions made in the application do not go beyond what is necessary to meet the FUP conditions set out in the CIR. As FUP conditions may limit the losses of the applicant, a roaming provider's application cannot ground its roaming losses on the basis of a FUP that is more generous (e.g. offering unlimited data roaming and/or not asking for proof of stable links) than what is necessary to meet the FUP conditions in the CIR. In such cases, the NRAs shall refuse the surcharge.

**d) Level and distribution of surcharges to ensure the sustainability of RLAH**

204. When authorising the surcharge on regulated roaming services, the final decision of the NRA shall identify the amount of the ascertained negative retail roaming margin that may be recovered through the application of a retail surcharge on roaming services provided within the Union. If the authorisation to apply surcharges is granted by the competent NRA, roaming providers could apply surcharges on mobile retail roaming services for a period of 12 months unless the NRA requires changes to the surcharge pursuant to Article 7 (4) Roaming Regulation.

205. Article 10 (4) CIR stipulates that the surcharge should be consistent with the roaming traffic assumptions underpinning the assessment of the application and be set in accordance with the principles set out in Article 3 Directive (EU) 2018/1972.

206. In addition, Recital 30 Roaming Regulation stipulates that roaming providers, upon authorisation by the NRA, should be able to apply a surcharge to the regulated retail roaming services only to the extent necessary to recover all relevant costs of providing such services. In this line, Article 6 (1) Roaming Regulation and Recital 34 CIR state that the surcharge shall be applied only to the extent necessary to recover the costs of providing regulated retail roaming services having regard to the applicable maximum wholesale charges. BEREC notes that roaming providers' costs of purchasing wholesale roaming access are limited by the maximum wholesale charges for the corresponding components of wholesale roaming access, and NRAs should take this into account when considering applications for applying a sustainability surcharge. However, in BEREC's opinion, an applicant may duly substantiate that such surcharges may not in principle be strictly limited to the maximum wholesale charges in order to be able to recover the costs of providing regulated retail roaming services. For instance, this could be the case of MVNOs that might have additional costs to provide retail roaming services and may according to Article 3 Roaming Regulation be charged at fair and reasonable prices on top of the wholesale roaming charges laid down in Articles 9, 10 and 11 Roaming Regulation. Nevertheless, BEREC considers that authorisation of surcharges higher than the applicable wholesale charges by NRAs should be subject to narrow interpretation and that NRAs should strictly assess that the roaming provider has fulfilled its burden of proof in justifying the need for such surcharges in its application.

207. When assessing the level of the sustainability surcharge, NRAs shall ensure that the level of the surcharge does not go beyond what is necessary for cost recovery. In doing so, they shall take into account any FUP implemented by the roaming provider and the potential volumes exceeding the FUP (and resulting in surcharges). However, roaming providers are not permitted to charge the sustainability surcharge in addition to the surcharges according to Articles 8 (1) Roaming Regulation. In the exceptional case where the sustainability surcharges are higher than the surcharges according to Article 8 (1) Roaming Regulation (i.e. surcharges for exceeding any FUP), the sustainability surcharges could also be applied when exceeding the FUP (instead of the surcharges according to Article 8 (1) Roaming Regulation). In any case, when authorising the sustainability surcharges, NRAs shall ensure that the level of the surcharges applied (both within and after the consumption of FUP volumes) do not go beyond cost recovery.

208. From BEREC's point of view, Recital 34 CIR gives guidance about the distribution of sustainability surcharges. As part of its application, the roaming provider itself has to show that its proposed roaming surcharges ensure the sustainability of its domestic charging model while at the same time the charges do not go beyond what is necessary for cost recovery. Therefore, the roaming provider should propose to which regulated roaming services (calls made or received, SMS sent, data services) or tariffs (all tariffs, specific tariffs, etc.) surcharges should be applied. With a view to its approval by the relevant NRA, the roaming provider should take into account the distributional impacts of the proposed roaming surcharges on end users. Surcharges

differing significantly between tariffs should therefore be duly justified by the applicant roaming provider. The sustainability surcharges can be applied from the start of using the mobile services while roaming, starting with the first minute, SMS or MB used.

***T. NRA tasks with regard to the FUP / dispute resolution***

209. In accordance with Article 5 (2) CIR, the roaming provider shall notify any FUP to the NRA. The roaming provider should send the complete set of information on the FUP to the NRA either in advance of implementation or, at the latest, after the FUP of a tariff plan becomes applicable. BEREC considers that this obligation does not compel NRAs to formally approve the FUP in terms of a pre-authorisation with a formal decision. However, BEREC is of the opinion that the supervision and enforcement provisions set out in Articles 7 (4) and 17 Roaming Regulation are without prejudice to the aforementioned. Therefore, the NRAs may want to examine whether the notified FUP is in compliance with the provisions set out in the CIR. Accordingly, NRAs may want to impose measures according to Articles 7 (4) and 17 Roaming Regulation and intervene on their own initiative in order to ensure compliance with the Regulation. Should NRAs find that a breach of the obligations set out in the Roaming Regulation has occurred, it shall have the power to require the immediate cessation of such a breach.

210. With regard to notifying the NRA about organised resale and the measures to be taken pursuant to Article 5 (6) CIR, the roaming provider must notify both the evidence of organised resale and the measures that are taken by the roaming provider at the same time. In cases where a roaming provider establishes that such an abuse is occurring, it shall notify to the NRA the evidence characterising the systematic abuse in question and the measure taken to ensure compliance with all conditions of the underlying contract, at the latest at the time when such measures are taken. BEREC considers that there may be individual cases that could possibly require detailed analysis by the relevant NRA.

211. With regard to the dispute resolution procedure in accordance with Article 25 Directive (EU) 2018/1972, the Roaming Regulation grants the customer the right to avail itself of transparent, simple, fair and prompt out-of-court dispute resolution procedures (pursuant to Article 18 Roaming Regulation) established in the Member State of the roaming provider in accordance with Article 25 Directive (EU) 2018/1972. In accordance with Article 5 (3) CIR, as part of these proceedings, the roaming customer has the opportunity to provide evidence contesting any finding by the roaming provider of abusive or anomalous use of regulated retail roaming services for purposes other than periodic travel after it has sent an alert to the roaming customer. BEREC considers that it would be best practice for the roaming provider not to effectively impose surcharges (e.g. by inclusion of the charges in the monthly bill) on a customer that has initiated a complaint or dispute until it is resolved.

212. Where applicable for the exercise of the powers conferred on them by national law transposing Directive (EU) 2018/1972 other competent authorities will also be responsible for monitoring and supervising the application of the FUP. In such cases relevant guidelines should be applied accordingly.



***U. ANNEX***

Tables from Excel File