

BEREC Report on the outcome of the public consultation on the BEREC Guidelines on the Retail Roaming Guidelines



December, 2022

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Executive summary

During the 51st BEREC plenary meeting (9-10 June 2022), the Board of Regulators has approved the draft BEREC guidelines on Regulation (EU) 2022/612 and Commission Implementing Regulation (EU) 2016/2286 (Retail Roaming Guidelines) for public consultation.

According to Article 4 (3) and Article 8 (6) of Regulation (EU) 2022/612 (hereafter “Regulation”), 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 Roaming Guidelines are designed to explain the 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. 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 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 Regulation in their Member States.

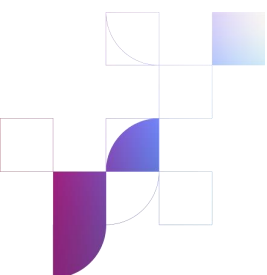
During the public consultation, stakeholders were requested to provide comments on the draft Retail Roaming Guidelines and specifically include reference to relevant paragraphs/guideline of the document.

Stakeholders were invited to submit their inputs on the draft Retail Roaming Guidelines by 9 August 2022. Contributions received after the above-mentioned deadline were not taken into account. All stakeholders were invited to submit their contributions to the dedicated e-mail address PC_Retail_GLs@berec.europa.eu.

All contributions will be published on the BEREC website, taking into account requests for confidentiality and restricted use of personal data. Any such requests should clearly indicate which information should be considered confidential.

1. Introduction

This report summarises the responses sent by stakeholders to the public consultation on the Retail Roaming Guidelines (hereinafter – Guidelines). The BEREC public consultation was open from 10 June to 9 August 2022.



In response to the consultation, BEREC received 10 contributions from the following stakeholders¹:

1. Bouygues Telecom;
2. Contributor (Confidential);
3. EENA;
4. ETNO-GSMA;
5. Liberty Global;
6. MVNO Europe;
7. NOS Comunicacoes, S.A (hereinafter – NOS);
8. Section of Electronic Communications Operators (SOEK);
9. Telefonica;
10. Contributor 2 (Confidential).

BEREC is grateful for receiving the submissions and has carefully considered them, and sets out its summary of stakeholders' assessments and responses in this report. The non-confidential responses are also published on BEREC's website and can be consulted for the complete version of respondents' submissions.

2. General comments

Overall, the stakeholders welcome the opportunity to provide feedback on the Guidelines (**Telefonica, EENA, Liberty Global, MVNO Europe, ETNO-GSMA, NOS, Contributor, CONTRIBUTOR 2**) and understand the reason for BEREC to review the Guidelines, as they provide essential legal certainty, while ensuring that the provisions of the Regulation are applied in an appropriate and proportionate manner. **NOS** emphasises that the Guidelines are of utmost relevance, since they are designed to explain the Regulation, including the Commission Implementing Regulation 2016/2286 (CIR)². One **Contributor** added that these Guidelines, alongside the BEREC Guidelines on wholesale roaming access, are considered to be essential in helping the NRAs and the operators alike to understand and correctly apply the new roaming provisions, which entered into force on 1 July 2022.

Telefonica is of the view that the Guidelines should be updated according to the Regulation, while providing a proportionate guidance and a consistent application in all Member States. **Telefonica** notes that the Guidelines will be adopted by 1 January 2023 and therefore there is a gap between the adoption and the entry into force of the Regulation. It should be considered that obligations that came into force on 1 July 2022 have already been implemented by operators, and therefore some flexibility will be required during an adequate transition period, i.e. until 1 June 2023 (entry into force of certain transparency measures).

ETNO-GSMA also requests some flexibility in terms of timing in order to comply with these Guidelines until 1 June 2023, given the importance for the implementation of the new Regulation and the gap between the Guideline's adoption and the effective date of the

¹ In alphabetical order.

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R2286&from=EN>

Regulation itself (in line with the due date for information included in the BEREC databases to be added in the automatic message). **ETNO-GSMA** believes that any guidelines related to the obligations that already came into effect on 1 July 2022 will have to be considered with care and flexibility due to the implementation work and contract modifications already undertaken by operators.

NOS notes the fact that the final guidelines will not be published until the end of this year. Given the gap between the adoption of the Guidelines and the effective date of the Regulation itself (July 2022), some flexibility should be granted on its implementation, at least June 2023, that is the deadline for information included in the BEREC databases to be added in automatic messages. Also, as for the obligations that already came into effect on 1 July 2022, namely those related to contract information, the same should be considered with care and flexibility due to the implementation work and modifications already undertaken by operators.

Bouygues Telecom also would like some flexibility until 1 June 2023 (in line with the deadline for information included in the BEREC databases to be added in an automatic message) in terms of timing for complying with these guidelines.

One **Contributor** also hopes that a transitional period will be granted by BEREC to allow operators to adjust to the revised interpretation of the Guidelines provided, and to ensure a gradual implementation of the roaming provisions, without incurring any unnecessary penalties.

In addition, Contributor 2 shares a few points, which do not fit in the analysis of the Guidelines and in their view, these are the next big issues that will be discussed in the context of the application of Roam Like at Home (RLAH) and the review of fair use policies in CIR 2016/2286:

a) Maximum retail charge for MMS – **Contributor 2** informs that paragraph 1 of Article 8 of the Regulation (last sub-paragraph) sets out: “Roaming providers shall charge their customers for the provision of regulated data roaming services on a per-kilobyte basis, except for MMS messages, which may be charged on a per-unit basis. **In such a case, the retail charge which a roaming provider may levy on its roaming customer for the transmission or receipt of a roaming MMS message shall not exceed the maximum retail charge for regulated data roaming services set out in the first subparagraph.**” In the first subparagraph there is no “maximum retail charge” defined, according to Recital 32 reporting: “Regulation (EU) No 531/2012 provides that, where a roaming provider applies a surcharge for the consumption of regulated retail roaming services in excess of any limits under any fair use policy, the sum of the domestic retail price and any surcharge applied for regulated roaming calls made, regulated roaming SMS messages sent or regulated data roaming services **are not to exceed** EUR 0,19 per minute, EUR 0,06 per SMS message and EUR 0,20 per megabyte used, respectively. Given the effective functioning of RLAH rules since 15 June 2017, **that provision is no longer necessary**”. Therefore, **Contributor 2** suggests introducing a guideline referring to this point as a potential typo, and therefore clarifying that a maximum retail charge for MMS is neither defined nor applicable.

b) The review of Fair Use Policies - **Contributor 2** believes that fair use policies are currently too strict. **Contributor 2** considers that if at the beginning it could be assumed that FUPS are a safe harbor for roaming customers, now after the substantial success and the

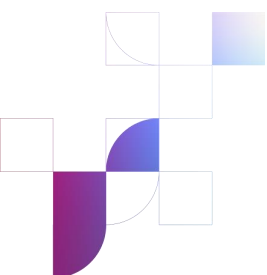
compliance of roaming providers with the new RLAH rules, fair use policies should be considered to protect roaming providers from opportunistic customer behavior. Contributor 2 in particular stresses the oddness of **calculating the day of presence while roaming**. **Presence** data are easily detectable **only in case of traffic performed**, otherwise, in the absence of traffic, a deep investigation of the network systems is needed and currently such information is not stored for billing purposes, impeding the operators to prove the presence when there is no traffic in cases of disputes. Moreover, reference is made to the current definition of presence as set out in Art 4 (4) CIR: “*For the purpose of the second, third and fifth subparagraph, **any day when a roaming customer has logged on to the domestic network shall be counted as a day of domestic presence of that customer***”. Contributor 2 would recommend not to apply such an indicator to cross border customers who perform almost all their traffic in roaming but in the evening log to the domestic network or one or two days journey, typical in the business market. Contributor 2 argues that presence in an EU/EEA country different from the domestic one is not expensive for roaming providers (maybe except for M2M, where a fee could be due even only for presence) instead of traffic that involve direct and pay per use costs. Therefore, Contributor 2 suggests removing the presence parameter from the objective indicators related to FUP due to its cumbersome handling and very limited effectiveness in countering abusive behavior.

MVNO Europe informs that mobile operators have prepared the implementation of the Roaming Regulation for months, based on the precise text of the Regulation, often in close contact with NRAs, and have proceeded dutifully with the necessary technical IT processes, and contractual implementation at the retail level (and other) to comply with the requirements of the Regulation as of its date of entry into force on 1 July 2022. –Given that BEREC intends to publish the Guidelines only in December 2022, i.e. six months after the deadline for implementation of several retail-level measures by operators, **MVNO Europe** requests BEREC to exercise particular caution to avoid unintentional disruption of existing implementation modalities. In particular, **MVNO Europe** asks BEREC not to formulate any new or modified Guidelines going beyond those that are put forward in the consultation document, because this might force operators to change or re-do the technical IT processes and contractual implementation work that was already completed or that is currently being completed, and thus incur additional costs.

MVNO Europe acknowledges that the obligations of roaming providers to provide information about numbering ranges for value added services and information about alternative means of access to emergency services, regarding to the information contained in future BEREC databases, apply from 1 June 2023. At present, **MVNO Europe** has no particular comment to make on the aspects of the draft Guidelines addressing these points.

More generally, **MVNO Europe** asks BEREC to systematically take into account the fact that both light and full MVNOs are prevalent in EU Member States, and that some are focused on specific market segments, and/or are smaller undertakings that have limited human and technical resources.

SOEK echoes all the comments and proposals submitted by **ETNO-GSMA**.



BEREC Response:

- BEREC notes that there is no possibility for a transitional period as the regulation applies already since July 2022.
- The BEREC Retail Roaming Guidelines concerning the FUP are based on the CIR. As the CIR has not been changed, the GL related to the FUP are left unchanged in substance. BEREC will update this part of the GL once a new CIR is in place (review report expected in 2023).
- BEREC also would like to note that the provisions of the Roaming Regulation and the CIR allow operators to use a FUP, but there is no obligation to do so.
- Regarding the input about MMS, even though MMS are steadily declining, BEREC considers it necessary to explain if and what price cap applies in the Guidelines when exceeding the FUP.

3. Comments on the Scope (GL 1-7)

Guideline 3:

EENA notes that the Roaming Regulation provides a technology-neutral definition for a voice service as a means used by a provider to connect voice telephony calls between end-users. Referring to GLs 3 and 4, EENA notes that VoLTE requires a data connection and, by extension, the provision of a VoLTE service for a roaming end-user requires a data roaming service. With regard to the issues addressed in GL 3, GL 4 and additionally GL 11, **EENA** would like to bring to BEREC's attention the consequences of the aforementioned guidelines for access to emergency services through emergency communications.

At the moment, VoLTE services are widely available in Europe and, in parallel, legacy mobile network technologies (i.e. 2G/3G networks) are also still widely available. 2G/3G networks are used in the EU/EEA for the provision of voice access to emergency services (referred to as circuit-switched fall back - CSFB). So even if there are differences in the network technology generations deployed by roaming providers and visited networks, voice access to emergency services can still be guaranteed for roaming end-users.

As 2G and 3G networks are phased out, a transition to VoLTE for access to emergency services will need to take place. This transition is not without challenges and, according to recent media reports, European end-users are experiencing this first-hand in the United States (US) at the moment. Some mobile networks in the US have phased out 2G/3G networks and some European end-users are not offered a VoLTE service of any kind by these visited networks due to compatibility/interoperability issues between networks and handsets.

This problem could seriously harm the electronic communications market and put at risk the safety of its customers. It is therefore necessary that MNOs, MVNOs, handset and chipset manufacturers, standardisation bodies, national governments and competent public authorities work together to address this problem and ensure compatibility and interoperability

of VoLTE services between all networks and VoLTE-capable devices. Until this problem is addressed and resolved, **EENA** strongly believes that any plans for phasing out of 2G and 3G networks in European countries should be reviewed to take account of the impact on continuity of access to emergency services. Otherwise lives will unnecessarily be put at risk.

If 2G/3G networks are phased out in Europe and a similar situation occurs as is currently being experienced in the US by European roamers, **EENA** considers that this would be a breach of the Regulation and of Article 109 of Directive (EU) 2018/1972 (EECC), where access to emergency services through emergency communications is enshrined as an obligation for electronic communications service providers and a right of all end-users.

Guideline 4:

EENA's view on GL 4 is expressed in its comment on GL3.

BEREC Response:

- BEREC considers VoLTE to be a voice service, therefore all obligations that concern regulated voice calls also apply to VoLTE
- BEREC is aware of the issue regarding VoLTE and the potential incompatibility with the access to emergency services. BEREC is also aware that GSMA is working on these issues inside its task forces. Furthermore, in the BEREC wholesale roaming guidelines operators are encouraged to prioritise VoLTE roaming access agreements in case of 2G/3G phase-out to mitigate this problem from a roaming access perspective.

Guideline 7:

In relation to the measures applicable to non-terrestrial services, **Telefonica** considers that the guideline should specify that only certain measures in Articles 13 and 14 apply. Therefore, **Telefonica** suggests the following amendment: *"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 **certain** 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."*

BEREC Response:

BEREC agrees that not all transparency measures apply to roaming outside the EEA and to roaming on non-terrestrial networks, and will update the Guidelines as follows: *"...apply to roaming services within the Union, while certain measures set out in Article 13 and 14 Roaming Regulation apply also to roaming services on non-terrestrial networks, as well as to roaming services outside the Union."*

4. Comments on Application of RLAH (GL8-13)

Guideline 11:

Telefonica and ETNO-GSMA consider that, when the Guidelines refer to certain Recitals or Articles of the Roaming Regulation, the same wording should be included. This will avoid introducing confusion or misunderstanding. In particular, they request to include in GL 11 the same wording as in Article 4 (2) and Recital 27 Roaming Regulation, or just include direct references to these provisions. **ETNO-GSMA** informs that in this respect, the new GL 11 on QoS supposedly aims at covering the multitude of possible scenarios and is therefore becoming too prescriptive, while still remaining too high-level to prevent complications, not making much clarification on top of the recitals of the Regulation itself. In practice, it is for example less than clear how “highest available speed” correlates with “maximum available speed” and, how “newest network generation and technologies available” on the visited network is to be viewed vis-à-vis the term “newer network generation or technology” used by Recital 27 Roaming Regulation.

EENA’s view on GL 11 is expressed in line with the comments on GL3.

BEREC Response:

The BEREC Guidelines provide further explanation of the Regulation and guidance for operators and NRAs in order to ensure a harmonised application of the legal provisions, which is explicitly required by the Roaming Regulation in Recital 14. In particular, GL 11 sketches the scope of maximum available data speeds while roaming. Generally, the available maximum data speed while roaming should not be lower than the available maximum data speed offered domestically.

Guideline 13:

Telefonica suggests reviewing the wording to be more positive and to allow the implementation of specific measures intended to prevent fraud: “***Any other ~~sanctions~~ measure should be (e.g. withdrawal of roaming services) are not in line with the Roaming Regulation. In particular, measures to prevent the fraud in line with the Regulation should be allowed.***”

ETNO-GSMA is suggesting a similar, more positive wording like Telefonica: “Any other **measure should be** in line with the Roaming Regulation”.

NOS believes that this guideline goes beyond the scope of the Roaming Regulation and does not provide for legitimate situations for suspension of access to roaming, such as in cases in which the allowance is exhausted, or in which the existence of fraudulent behaviour is proven. Therefore, **NOS** suggests removing this guideline or modifying the wording to be more positive (same as **ETNO-GSMA** proposal).

Contributor 2 intends to highlight that the prohibition of “*other sanctions*” different from the application of a surcharge refers only to the case of exceeding the FUP limits, and therefore, the possibility to withdraw in fraud cases should be safeguarded. Therefore, Contributor 2

suggests the following: “...Any other sanctions **for exceeding the FUP** (e.g. withdrawal of roaming services) are not in line with the Roaming Regulation.”

BEREC Response:

BEREC does not agree with the proposal. Operators are allowed to apply FUPs, but a withdrawal of roaming services would, in BEREC’s view, not be in line with the Roaming Regulation.

5. Comments on Domestic retail price (GL 14-17)

Guideline 14:

Telefonica sees no need to review the overall tone of the wording - the draft substitutes “shall” by “must” or “have to” in several guidelines. According to **Telefonica’s** experience in the roaming market, there is no need for such changes, and therefore **Telefonica** requests to keep the current wording, as it is perfectly valid.

BEREC Response:

BEREC considers that the substitutes “shall” by “must” or “have to” do not change the meaning of the Guidelines and therefore rejects Telefonica's proposal.

Guideline 15:

Telefonica sees no need to review the overall tone of the wording - the draft substitutes “shall” by “must” or “have to” in several guidelines. According to **Telefonica’s** experience in the roaming market, there is no need for such changes, and therefore **Telefonica** requests to keep the current wording, as it is perfectly valid.

NOS notes that the definition presented in the Regulation for domestic retail price indicates that the off-net price should be considered as a reference for the application of the RLAH. GL 15 clarifies that “*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.*” Thus, according to **NOS’** interpretation, if a customer has a tariff that includes different prices for national networks A and B, when this customer calls a national number of network A while roaming, it will be charged with the off-net price defined for the network A. However, if this same customer calls a number located in the country where the customer is roaming, it is not clear which off-net price should be applied, namely which of the reference prices should be used to charge this call.

Guideline 17:

NOS’ view on GL 17 is expressed in line with the comments for GL 15.

BEREC Response:

See response to Guideline 14.

BEREC notes, that the off-net price only refers to domestic calls (see Article 2 (2) n), not to international calls, and therefore disagrees with the interpretation provided by NOS.

6. Comments on Fair Use Policy (GL 18-75)

Guideline 21:

Telefonica suggests to grant operators some flexibility and the possibility to request some evidence from the end-user. For example, instead of changing the FUP, which is a complex and costly process from the IT perspective, the roaming provider may decide to offer other special measures, such as extraordinary allowances, once the case is analysed. Therefore, the guideline should be amended as follows: ***“Exemptions to the applicable FUP or other measures by roaming providers aiming to address exceptional circumstances 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 or implement other relevant measures for an appropriate period if the roaming customer makes such a request and provides reasonable evidence to the roaming provider.”***

ETNO-GSMA suggests to amend this guideline as follows: ***“Exemptions to the applicable FUP or other measures by roaming providers aiming to address customer’s out-of-the-ordinary needs 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 or implement other relevant measures for an appropriate period if the roaming customer makes such a request and provides reasonable evidence to the roaming provider.”***

NOS notes that GL 21 provides for the possibility of extending the FUP limits in exceptional cases. Although it may be considered an acceptable claim, such a prerogative goes beyond the scope of the Roaming Regulation. Also, an extension of the FUP entails additional costs for operators, especially in cases where data consumption occurs through a data allowance (without any additional retail revenue for the roaming provider), but for which the roaming provider has to pay a wholesale tariff. Hence, it is essential that the operator should have the possibility to require some evidence from the end-user that the request is made under these exceptional circumstances. For this reason, the guideline must be complemented with the reference to ***“Roaming providers should therefore extend the applicable FUP for an appropriate period if the roaming customer makes such a request and provides reasonable evidence to the roaming provider.”***

Contributor 2 comments on the last sentence of GL 21 and informs that the guideline could provide more information on how to extend the applicable FUP. Open bundle does not need

modifications. For objective indicators, a freeze of the 4-month period for a predefined term or its extension for a predefined term could be proposed. Therefore, **CONTRIBUTOR 2** suggests the following amendments: *“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. For example for objective indicators FUP can be made longer the 4 months observation time (up to 6 or 8 months), while for Open data bundle FUP no modification are needed according to its time limited scope.”*

One **Contributor** indicates that, regarding the extension by the roaming providers of the fair use policy in case of force majeure, it is not very clear from the Guidelines, if the said extension concerns the volume of GB provided to the customers in roaming or the other fair usage policy indicators as well. Recital 28 Roaming Regulation talks about the granting by the roaming providers of the fair usage policy allowance. For implementation and clarity reasons, this **Contributor** deems it necessary that BEREC clarifies that the extension refers to the volume of GB offered to the customers in roaming and that more information on the allowance is to be provided as well. It is indeed unclear if the extension of the volume of GB should be the same as the one provided in the original offer or if it can be lower. In any case, this **Contributor** would like to point out that such an extension should not be considered mandatory for the roaming provider but voluntary, considering that:

a) Such extension should and must not be provided according to the Roaming Regulation in cases of force majeure and that it can be granted only if certain conditions provided by the roaming regulation are present. Recital 28 Roaming Regulation specifies that roaming providers should extend the fair usage policy only: i) *“in cases of force majeure (...) that involuntarily extend the period of temporary stay of the roaming customer in another Member State* “and ii) *based on “justified requests of the roaming customers”*.

b) Considering that such an extension is implying for the roaming providers relevant costs, it is mandatory to leave the choice to the roaming providers to decide whether or not to grant such an extension and if so, for how long. Recital 28 Roaming Regulation is very clear on that considering that it provides that *“In cases of force majeure caused by circumstances such as pandemics, temporary border closures or natural disasters, which involuntarily extend the period of temporary stay of the roaming customer in another Member State, roaming providers should extend the applicable fair use allowance for an appropriate period upon a justified request by the roaming customer”*.

Considering all the above, this **Contributor** invites BEREC to:

- a) Clarify that the extension refers to the volume of GB offered to the customers in roaming and provides more guidance on the allowance to be provided.
- b) Clarify that the granting of such extension by the roaming providers is voluntary considering the relevant costs that operators will incur in granting such an extension and that in any case certain conditions must be fulfilled to require the extension by the roaming customers.

BEREC Response:

- BEREC partially accepts the comments and will update the Guidelines as follows: ***“Roaming providers should therefore extend the applicable FUP for an appropriate period, if the roaming customer makes a justified request to the roaming provider.”***
- The BEREC Retail Roaming Guidelines concerning the FUP are based on the CIR. As the CIR has not been changed, the GL are left unchanged in substance. BEREC will update this part of the GL once a new CIR is in place (review report expected in 2023).
- BEREC would like to note that the CIR sets out minimum measures (e.g. data limit, 4-month period). Operators are free to set higher limits should they wish.

Guideline 23:

ETNO-GSMA considers that it would be wise to modify the contract either at the occasion of a renewal or substantive change of the contract or at the start of a new contract only. Even if the requested changes should not lead to contract termination, it would be less burdensome for the operators as well as for customers. Regarding the “observation window”, it would be useful if BEREC could clarify whether this refers to either a “notification” or “information” in the contract. **ETNO-GSMA** considers that the latter would be more appropriate.

Further, **ETNO-GSMA** suggests deleting the third sub-bullet of the first bullet point in GL 23, as it appears to be confusing. On the one hand, the Guideline clearly aims to cover what should be included in the contract. On the other hand, the third sub-bullet refers to the *“notification alerting the customer...to the possibility for the roaming customer to change their usage pattern,”* which, when interpreted literally and directly, would suggest that every actual notification about the need to change usage pattern should become part of the contract and therefore, implicitly, regarded as contract amendment, which would be illogical and hardly practical. **ETNO-GSMA** therefore suggests the following change: *“an **information** 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);”*

BEREC Response:

The BEREC Retail Roaming Guidelines concerning the FUP are based on the CIR. As the CIR has not been changed, the GL are left unchanged in substance. BEREC will update this part of the GL once a new CIR is in place (review report expected in 2023).

Guideline 24:

Regarding the provision of transparent, simple and efficient procedures to address customer complaints relating to the application of a FUP, **NOS** understands that the means made available for this purpose can be the same as those used at the domestic level for the same

purpose. Additionally, **NOS** understands as redundant the statement “... *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...*”.

BEREC Response:

The BEREC Retail Roaming Guidelines concerning the FUP are based on the CIR. As the CIR has not been changed, the GL are left unchanged in substance. BEREC will update this part of the GL once a new CIR is in place (review report expected in 2023).

Guideline 32:

Contributor 2 notes that failure to produce the stable link proof cannot result in applying surcharge only on future traffic, as that would lead to the customer throwing out the SIM and making another one, and an FUP measure designed in such a way is ineffective. **Contributor 2** informs that it should be clarified that unregulated offers can be defined for customers who claim not to have a stable link (e.g. tourists from RoW) or that a surcharge can be applied to such customers stating not to have a stable link from the beginning of the contract. Therefore, **Contributor 2** proposes the following amendment: “*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 **previous** and 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 **a prevalent roaming activity will be detected**), 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.*
- ***Impossibility to recover revenue for surcharge application to the previous roaming activity in a predetermined period (i.e. two months) entail roaming provider to terminate the contract and switch the customer to a non-regulated offer.***

Customers stating not to have a stable link with domestic country could access dedicated not regulated retail offers.”

BEREC Response:

- The BEREC Retail Roaming Guidelines concerning the FUP are based on the CIR. As the CIR has not been changed, the GL are left unchanged in substance. BEREC may update this part of the GL once a new CIR is in place (review report expected in 2023).
- Furthermore, BEREC considers that the proposals go beyond the obligations of the Roaming Regulation and the CIR and therefore rejects the proposals.

Guideline 34:

EENA would like to draw attention to GL 34 and GL 36 where long inactivity of a given SIM card associated with use mostly, if not exclusively, while roaming is considered an objective indicator of unfair use. **EENA** would respectfully ask BEREC to stipulate here that access to emergency services from such a SIM card shall still be possible and indeed such access shall be exempted from the application of any fair use policies in this regard.

BEREC Response:

This subject is covered in the responses to GL 105 and 106.

Guideline 36:

EENA's view on GL 36 is expressed in its comments on GL 3.

BEREC Response:

See answers Guideline 3 and Guideline 34

Guideline 50:

Contributor 2 notes that in order to promote a fair use policy that disincentivises misuse, BEREC should specify that the surcharge applicable for any fair use policy is additive, allowing explicitly multiple application of the surcharge foreseen by the roaming provider for each FUP violated by the customer. Namely, if a customer is found to be without a stable link, and has prevalent usage and presence in the EU/EEA and exceeds the roaming data allowance, to the traffic above the roaming data allowance a surcharge up to 3 times the wholesale data cap could be applied. Such a policy would also incentivise roaming providers to implement the different FUPs and therefore make the RLAH regime more sustainable, maximising welfare for customers using roaming according to the Roaming Regulation and deterring abusive behaviour. Contributor 2 requests insertion of the following: *“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, GL 27 to 46) therefore applying twice (or more times) the surcharge foreseen for each Fair use policy violated.”

BEREC Response:

BEREC considers that this goes beyond the obligations of the Roaming Regulation that foresees only one surcharge.

Guideline 59:

Telefonica and **ETNO-GSMA** note that there is a change in wording in this guideline compared to the previous text, which relates to the treatment of add-ons and replaces “*separate but similar treatment as the bundle*” with “*the same treatment as the bundle*.”. It is not apparent from the draft Guideline what are the reasons for this change and what would be the implications for FUP for bundles. Therefore, **Telefonica** suggests maintaining the original wording to ensure consistency and predictability.

BEREC Response:

BEREC considers that the rewording was necessary to be more clear on the treatment of bundles and add-ons without altering the interpretation.

Guideline 64:

Telefonica and **ETNO-GSMA** note that concerning the examples included, it appears that there may be an inversion between 10 and 15 in the third example, first sentence and that this should be a bundle of 15 euros for 10 GB of data volume.

Contributor 2 comments that roaming data allowance is a safety provision for roaming providers. Moreover, FUPs are a possibility for a roaming provider, not an obligation. Therefore, when the roaming data allowance comes out larger than the domestic limit, no “open data bundle” FUP will apply: the customer is already able to use the whole domestic volume in roaming according to the principle of RLAH. CIR 2016/2286 states clearly that open data bundles apply “*Without prejudice to any applicable domestic volume limit....*”, meaning that the roaming data allowance cannot exceed the domestic limit. With the current formulation, roaming providers should provide more roaming data than domestic data, which Contributor 2 considers to be illogical under a safeguard measure like open data bundle FUP. Therefore, **Contributor 2** requests the following amendments on:

- Second bullet point: “*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~~ **domestic** data allowance. **If no “out-of-bundle” price applies (that is the data traffic is blocked when domestic allowance is reached) when domestic data allowance is reached even roaming data is blocked, irrespective of the data volume consumed in roaming.”***

- Fifth bullet point: 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~~ **domestic** 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). **If no “out-of-bundle” price applies (that is the data traffic is blocked when domestic allowance is reached) when domestic data allowance is reached even roaming data is blocked, irrespective of the data volume consumed in roaming.**

BEREC Response:

- BEREC thanks for noting the inversion and the guideline is modified accordingly.
- BEREC notes that the proposals by Contributor 2 are already covered *by the current text of the Guidelines*.

Guideline 65:

Contributor 2 believes that the proposed interpretation is fully adherent to the spirit of Fair Use policies aimed to prevent the improper use of the RLAH principle, allowing to continue to provide benefits to customer using it in a non-abusive way: that is, for periodic travelling in the Union. **Contributor 2** suggests the following inclusion: *“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 GL33 to 46 above. **Therefore if a surcharge is applied according to the control mechanisms laid out in Article 4 (4) CIR, a further surcharge could be applied according to the open data bundle FUP when roaming data allowance is expired.**”*

BEREC Response:

BEREC considers that this goes beyond the obligations of the Roaming Regulation that foresees only one surcharge.

7. Comments on Application of a surcharge (GL 76-94)

Guideline 80:

Telefonica sees no need to review of the overall tone of the wording - the draft substitutes “shall” by “must” or “have to” in several guidelines. According to **Telefonica’s** experience in

the roaming market, there is no need for such change, and therefore **Telefonica** requests to keep the current wording, as it is perfectly valid.

BEREC Response:

BEREC considers that the substitutes “shall” by “must” or “have to” do not change the meaning of the Guidelines and therefore rejects Telefonica’s proposal.

Guideline 81:

For the guideline to reflect the requirements of Article 4 CIR, **Telefonica** suggests the following amendment: *“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 GL 27 to 32) and the customer does not provide **sufficient proof** #, the roaming provider can apply roaming surcharges for that customer's consumption of regulated retail roaming services.”*

BEREC Response:

The BEREC Retail Roaming Guidelines concerning the FUP are based on the CIR. As the CIR has not been changed, the GL are left unchanged in substance. BEREC may update this part of the GL once a new CIR is in place (review report expected in 2023).

Guideline 82:

Contributor 2 informs that like for GL 65, the proposed interpretation is fully adherent to the spirit of FUPs aimed to prevent the improper use of RLAH principle, allowing to continue to provide benefits to customer using it in a non-abusive way, that is, for periodic travelling in the EU. Therefore, Contributor 2 suggests following amendments: *“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 a stable link or normal residence). **Therefore, if a surcharge is already applied to data according to the stable link FUP, the expiry of roaming data allowance according to the open data bundle FUP, would trigger the additional application of the surcharge foreseen for open data bundle FUP.**”*

Contributor 2 notes that same principle also applies to GL 85.

Guideline 85:

Contributor 2's view on GL 85 has been expressed in its comments on GL 82.

BEREC Response GL 82 and 85:

See response above GL 65.

8. Comments on Alternative tariffs (GL 95-99)

Guideline 99:

Telefonica and **ETNO-GSMA** consider that there is no rationale for the provision of an additional information to the customer due to the entry into force of the Regulation. This is not a requirement of the Regulation and is overly burdensome for operators. It should ultimately be left to the roaming providers to determine the appropriate approach. For this reason, they propose the following deletion: *~~“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.”~~*

BEREC Response:

According to Article 8 (2) Roaming Regulation, operators need to inform customers in reasonable intervals about alternative tariffs and the possibility to switch to the default tariff. BEREC considers that this is another good occasion.

Guideline 100:

ETNO-GSMA fully supports BEREC’s understanding that customers who have explicitly selected special tariffs should not be migrated to avoid confusion for customers and complex procedure for the roaming providers.

BEREC Response:

No change required.

9. Comments on Transfer between roaming tariffs (GL 100-102)

Guideline 101:

Telefonica sees no need in the review of the overall tone of the wording - the draft substitutes “shall” by “must” or “have to” in several guidelines. According to **Telefonica’s** experience in the roaming market, there is no need for such changes, and therefore **Telefonica** requests to keep the current wording, as it is perfectly valid.

BEREC Response:

BEREC considers that the substitutes “shall” by “must” or “have to” do not change the meaning of the Guidelines and therefore rejects Telefonica’s proposal.

Guideline 102:

Contributor 2 assumes that any change to the roaming enabled offers that is independent from the roaming provider willingness (like an increase of wholesale charges required by the visited non-EU/EEA network) which is necessary to ensure the economic sustainability of the whole offer, does not trigger any withdrawal right. **Contributor 2** therefore suggests to delete GL 102 or limit it only to the regulated roaming component of the roaming-enabled tariffs as follows: *“Should roaming providers make changes to **the regulated roaming component of 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**”.*

BEREC Response:

BEREC does not agree with the proposal, as the customer’s right to withdraw from their contract when providers make changes to their roaming-enabled tariffs is a general obligation stemming from the European Electronic Communications Code.

10. Comments on Charges for access to emergency services (GL 105-106)

Guideline 105:

EENA welcomes the reference to Article 109 of Directive (EU) 2018/1972 in GL 105 and, in particular, that it explicitly considers access to emergency services and the provision of caller location information to be free-of-charge. With respect to caller location information derived from the roaming end-user’s handset, the standardised methods of transmission currently implemented for the provision of such information are by SMS, and by HTTPS, as specified in ETSI TS 103 625. This is in accordance with the guidelines provided by the European Commission to notified bodies in charge of radio equipment compliance with Directive 2014/53/EU (Radio Equipment Directive). Therefore, SMS and HTTPS (which requires a data connection) transmission of handset-derived caller location information must be provided free-of-charge to meet the requirements of the Regulations.

EENA adds that, where an SMS-to-112 service is available in a Member State and is appropriate for use by roaming customers, it shall also be free-of-charge to roaming end-users. Such services are considered as alternative means of access to emergency services through emergency communications, in particular for end-users with disabilities, as noted in GL 106. Other means of alternative access to emergency services should also be free-of-charge to roaming end-users such as the use of Real time text (RTT) and Total Conversation where available. RTT and Total Conversation are defined in Directive (EU) 2019/882 (Article 3 (9) and (14) of the European Accessibility Act).

Telefonica requests to make the differentiation between means of access to emergency services that are free of charge and those that are not necessarily free of charge (different means of access to emergency services). In order to avoid misunderstandings, **Telefonica** suggests either to refer to Article 109 of the EECC or to include the same wording. **ETNO-**

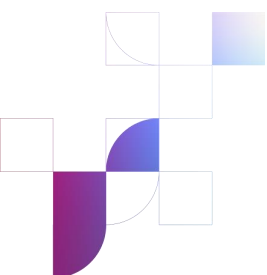
GSMA adds that the scope of mandated emergency services accessible for use by roaming customers, i.e., other emergency numbers besides 112 and alternative means, should be clarified by the NRA to ensure a uniform application and alignment among operators in the visited country and to ensure a harmonised approach towards roamers. For GL 105 in particular and noting that although there is already a reference to Article 109 of the EEC, it may also be worth specifying “*emergency services mandated by Member States*” as opposed to just “*any type of emergency communications*” and including a reference to technical feasibility.

Telefonica requests the following amendment: “*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~~ **emergency services mandated by Member States** to the most appropriate PSAP initiated by the roaming customer or to the transmission of caller location information.*”

Telefonica adds that in relation to GL 106, a reference to the availability of the EC Implementing Acts foreseen by Article 109 of the EEC should be included.

NOS notes that Article 109 of the EEC states that free of charge emergency communications corresponds to the single European emergency number ‘112’ and any national emergency number specified by Member States. Despite this, GL 105 and GL 106 introduce some confusion about what the emergency services that are free of charge are, by referencing that calls to “*any type of emergency communications*” cannot be charged. This conclusion cannot be drawn from the provisions of Article 109 of the EEC, so to ensure full alignment with the provisions of Directive (EU) 2018/1972, **NOS** suggests, at least, the following corrections: “*... In order to ensure that, roaming providers shall not levy on roaming customers any charges related **the single European emergency number ‘112’ and any national emergency number specified by Member State** to the most appropriate PSAP initiated by the roaming customer or to the transmission of caller location information.*”

Bouygues Telecom raises two concerns regarding calls to the emergency service made in VoIP, in order to comply with GL 105 and to allow users to access emergency communications free of charge. First of all, such calls made by voice over data from OTT services, or by other non-voice communications services, such as SMS, cannot be isolated and billed, or even not invoiced independently, for net neutrality reasons, as well as for technical reasons also at the time, depending on changes in the state of the art. Furthermore, via VoIP or SMS, caller location cannot be carried out through the operator’s network and must be routed via the terminal’s manufacturer. As **Bouygues Telecom** had already mentioned in its contribution to the draft transposition project within the CPCE, and to the public consultation on the guidelines on the wholesale market, the transmission to emergency services of the geographical location of the communication provided by the mobile device depends not only on the availability of the information, but also on the information transmitted by the terminal manufacturers, who must make that location information available to operators. Without the cooperation of these actors, telecoms operators will not be able to properly meet their legal obligations by transmitting data that they do not control, especially when data is encrypted or not usable.



Bouygues Telecom notes that in the context of GL 105 and GL 106, it would be desirable to make a distinction between emergency services, which are free of charge and those, which are not necessarily free (different means of access to emergency services). In addition, the scope of mandatory emergency services available to roaming customers, i.e. emergency numbers other than 112 and other means, should be clarified by national agencies in order to ensure uniform application and alignment between operators in the visited country and to ensure a harmonised approach towards itinerants.

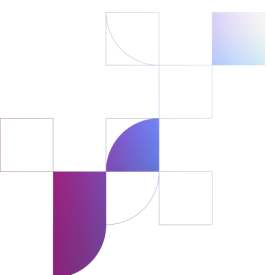
Guideline 106:

Liberty Global recognises the importance of ensuring that roaming customers can access emergency services while travelling. **Liberty Global** welcomes the greater clarity about how to ensure this access provided in the Guidelines. However, there are a number of areas, where further guidance is necessary. In particular, the role of the database to be established under Article 16 Roaming Regulation should be made more clear. GL 105 outlines that charges should not be levied on roaming customers for emergency communications to the nearest PSAP. GL 106 clarifies that this includes calling the single European emergency number “112” and “alternative means of access to emergency services through emergency communications.” GL 106 does not specify that these “alternative means of access” should be listed in the database established and maintained by BEREC under Article 16. **Liberty Global** believes that reference to this database should be included in GL 106 to avoid uncertainty as to which “alternative means of access” are in scope.

ETNO-GSMA notes that a reference to the availability of the European Commission’s Implementing Acts foreseen by Article 109 of the EECC should be included. It should be clarified that emergency services only include voice or SMS communication. As far as data services are concerned, the operators would need an explicit statement for the acceptance of zero rating for such services.

NOS suggests the following amendments (full explanation in GL 105): “*Emergency communications include calling the single European emergency number ‘112’ **and any national emergency number specified by Member State**, in particular for roaming customers with disabilities, that are appropriate for use by roaming customers.*”

EENA, Telefonica, NOS, Bouygues Telecom provided views on GL 106, which are included in their comments on GL 105.



BEREC Response GL 105 and 106:

BEREC agrees with Telefonica's and ETNO-GSMA's comment and, taking also into account NOS's comments, adjusts the sentence to: "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 to access emergency services *that are mandated and are technically feasible to be used in roaming (included also in the BEREC database)* or to the transmission of caller location information."

As regards NOS's comment and, taking also into account EENA's comments, BEREC notes that "*the conveyance of any type of emergency communications*" as set out in GL 105 means any way of communications such as voice, SMS or data used for emergency communications. These emergency communications to access those emergency services which are mandated in each Member State (under Article 109 of the EECC and included also in the relevant BEREC database) must be free of charge.

As regards Bouygues' comment, emergency communications to the most appropriate public safety answering points (PSAP) that originate from emergency applications should be free of charge in roaming when such applications are technically feasible and mandated by the Member States according to Article 109 of the EECC and have been notified to BEREC's database according to Article 16 Roaming Regulation.

Notwithstanding the above, BEREC agrees that the visited network and the roaming provider cannot have knowledge about those emergency communications that can be accessed by OTT services, and therefore operators will not have information available about the underlying data used for wholesale billing, unless the OTT service providers have an agreement with operators to exchange this information. This exchange of information between operators is covered by GL 16 of the BEREC Roaming Wholesale Guidelines.

However, it is relevant to note that at the retail level, roaming subscribers should be able to access emergency services through emergency communications (which are mandated in each Member State and included in the BEREC database), free of charge, even when they have exhausted their allowance or credit, or once they have consumed any FUPs applicable. For this reason, BEREC considers it necessary to add the following clarification to Guideline 106: "*These emergency communications must be accessible, even if subscribers have exhausted their allowance or credit, or have consumed their FUP.*"

BEREC agrees with Liberty Global's amendment and adjusts the sentence in GL 106 to: "*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, included in the BEREC database, and are appropriate for use by roaming customers.*"

11. Comments on Charges in currencies other than the Euro (GL 109-115)

Guideline 111:

ETNO-GSMA suggest that BEREC specifies that any adjustments which relate to changes in currency exchange rates, as described in Article 1 (4) Roaming Regulation, are made because of changes which result from the implementation of the Regulation. End users should not be allowed to churn without repayment of granted financial benefits. Such specification is necessary for operators outside the Eurozone to have the right to compensate decreased value of their currencies.

BEREC Response:

BEREC considers that changes in the retail surcharge due to changes in the currency exchange rates should follow the principle in Guideline 102. In BEREC's view, an increase in surcharges is not required for achieving compliance with the provisions of the Roaming Regulation. There is no need to change Guideline 111.

Guideline 114:

Telefonica and **ETNO-GSMA** note that this mechanism is not provided by the Regulation according to which the method under GL 109 is valid. The delegated regulation does not apply to retail roaming. In case an operator has already changed their contracts to comply with Article 1(4) Roaming Regulation, a further change on the basis of the proposed GL 114 should not be required.

BEREC Response:

The intention of Article 8 (1b) Roaming Regulation is to give the home provider an opportunity to cover its wholesale cost for termination of a roaming call, in excess of any FUPs. This implies that it is reasonable to use the same method for converting the retail roaming surcharge as the method used for converting the wholesale charge for termination of calls. The surcharge for receiving calls is a maximum cap. Operators should yearly verify that the surcharge in national currencies does not exceed the surcharge based on the method in Article 3 (3) Delegated Regulation. There is no need to change Guideline 114.

12. Comments on Transparency measures (GL 120-176)

Guideline 120:

EENA agrees fully with these guidelines which emphasise that the provision of information on emergency communications should be free-of-charge to roaming end-users (GL 120), that there is a specific requirement for the provision of such information to roaming end-users with

disabilities (GL 121) and that a provision is made available for roaming end-users utilising laptops with dongles or similar devices (GL 125). It is important that information on the available means of access to emergency services is communicated as far and as wide as possible to roaming end-users.

Telefonica and **ETNO-GSMA** consider that as long as the emergency SMS is not an opt-out service, it should be clarified in the guidelines as follows: *“All customers are entitled to receive an automatic message, free of charge, providing personalised pricing information, information about value-added services, **and all customers will receive an automatic SMS with information** on emergency communications and public warning mobile applications (when relevant) when the customer enters the visited country”*. **ETNO-GSMA** request BEREC to furthermore clarify, that as long as the emergency SMS may not be deselected by the customer, M2M tariffs may be excluded. Otherwise, such SMS will lead to a high number of incidents, as many M2M devices may not process such SMS correctly. Due to this problem, M2M tariffs are also excluded from the rule to send other transparency-related information via SMS in the Roaming Regulation.

Guideline 121:

EENA's view on GL 121 is included in the comments on GL 120.

BEREC Response:

BEREC agrees with the comment about M2M tariffs and is updating GL 129 accordingly. In case of M2M devices, there is no need to sending an automatic message with information about emergency communication. M2M is not considered an interpersonal communication service, hence it is not in the scope of emergency communication.

Guideline 123:

Telefonica and **ETNO-GSMA** note that the requirement to resend information for continued travel within the Union, whether it concerns the basic personalised information, information on data FUP in EU roaming or the emergency SMS (Articles 13, 14 and 15 Roaming Regulation) should be simplified and harmonised. They therefore propose the addition of the following paragraph: *“For articles 13, 14 and 15 of the Roaming Regulation, new information is not required to be sent when the customer continues travelling to another country within the EEA”*.

Guideline 124:

Telefonica and **ETNO-GSMA** provided comments in their feedback on GL 123.

BEREC Response GL 123 and 124:

BEREC considers that this goes beyond the requirement of the Roaming Regulation and BEREC considers that the information needs to be sent every time the customers enters another Member State. BEREC Guidelines will be clarified in this regard.

Guideline 125:

ETNO-GSMA informs that according to GL 125, for users of laptops with dongles or similar devices, *“the roaming provider should send one message to provide all of the required information.”* GL 127 further states that 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.)”*. According to ETNO-GSMA, it is currently unclear as to the exact information to be provided. In addition, Article 13(2) Roaming Regulation mentions that the obligation does not apply to devices that do not support SMS.

NOS notes that according to GL 125, for users of laptops with dongles or similar devices, the free of charge information preview by Article 14 Roaming Regulation could be provided 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. Regarding the availability of the required information on landing pages, such approach has been the subject of recurrent fraud practices, namely with the use of apps that allow data traffic to be “masked” for domestic operators, which view such traffic as being permanently carried out on this landing page. In such cases, while roaming operators do not bill or deduct such traffic from monthly allowances, they face high wholesale costs with fraudulently routed traffic. Hence, **NOS** considers that for laptops with dongles or similar devices, the provision of information provided for in Article 14 should not be limited to landing pages, and other alternative means such as apps, SMS, e-mail or a pop-up window must be explicitly allowed.

EENA’s comments on GL 125 is included in its comments on GL 120.

BEREC Response:

BEREC agrees that alternative means of providing the information are allowed as long as they fulfil the purpose. Especially for data roaming services transparency measures are considered particularly important. Therefore, and in line with recital 51 of the Roaming Regulation, BEREC, agrees that the provision of relevant information for roaming customers should not be limited to a landing page (as a minimum safeguard). BEREC encourages roaming providers to implement additional measures like mobile apps, e-mails or pop-up windows for roaming customers to have a detailed overview of their data roaming consumption. Guideline 125 has been amended accordingly.

Guideline 126:

ETNO-GSMA and **NOS** consider that information provided at the point of the first connection could be sufficient when it is feasible to provide all the mandatory information relevant to the customer’s tariff (since some tariffs may offer only data or only voice/SMS), instead of sending the information when a call is placed, and subsequent information when a data session is initiated. It should be noted in this respect that both can occur at the same time with IP-based communications.

BEREC Response:

BEREC notes that according to Article 14 Roaming Regulation this is not sufficient and rejects the proposal.

Guideline 128:

EENA welcomes GL 128, which prohibits end-users from opting out of automatic messages providing information about emergency communications and public warning mobile applications (when relevant).

Contributor 2 notes that the Roaming Regulation does not provide for differentiated messages related to emergency communications and public warning mobile applications. The ratio of the possibility for customers to request the roaming provider to stop sending informative messages is that the customer visits a specific country so often that such messages become de facto annoying because they would be providing information already known by that customer. The possibility to deactivate/reactivate those messages according to the information carried is not differentiated in the Roaming Regulation and constitutes an unfair burden for roaming providers, both on a technical side and in communication to customers, while also introducing a misleading complexity for customers both in the deactivation and reactivation phase. **Contributor 2** therefore requests the following deletion: *“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).”*

NOS informs that according to GL128 “an opt-out is not possible for the information about emergency communications and public warning mobile applications (when relevant).” **NOS** understands that this interpretation is based on the fact that the information included in the welcome SMS is now indicated in Articles 13 (prices), 14 (cut-off limits) and 15 (alternative means to access emergency services) of the Roaming Regulation, but only Articles 13 and 14 explicitly refer to the possibility of opting out. However, it is important to bear in mind that operators tend to include the predicted information in a single “welcome SMS”, because the successive sending of messages leads to impairing user experience and information fatigue. Therefore, when the customer wants to opt-out of the availability of a welcome SMS, it intends, and will assume, that it will not receive any more messages. However, by continuing to send a welcome SMS with part of the information (about emergency communications and public warning mobile applications), the roaming operator can be seen as acting against the customer's wishes.

Additionally, **NOS** requests clarifications on how to proceed with customers who have previously opted-out of receiving a welcome SMS, as well as how to proceed when a customer indicates that they effectively do not want to receive any more messages when roaming.

BEREC Response:

BEREC understands that this goes beyond the obligations foreseen in the Roaming Regulation and therefore rejects the proposal.

Guideline 129:

EENA welcomes that information about the possibility of accessing the emergency services by dialling 112 free of charge (only within the Union) remains in this update of the guidelines (GL 129). EENA also considers that roaming end-users should be able to dial all national emergency numbers free-of-charge in any Member State they are visiting in addition to the 112 number.

Telefonica requests the inclusion of the following clarification: *“The roaming provider can implement this provision by sending one or several SMSs including the information below (points 1-5). This SMS/SMSs should have the possibility be opted out and to be opted in.”*

NOS notes that according to Article 13 Roaming Regulation, roaming customers should have access, through a SMS message, to a link, free of charge, that could provide information about the numbering ranges for VAS or other relevant additional information contained in the database. The inclusion of such information in the SMS message must occur, as indicated in Article 24 Roaming Regulation, from 1 June 2023. **NOS** understands that the best way to ensure compliance with this obligation is to include a link forwarding to the operators’ website for additional information on access to VAS while in roaming. In turn, the operators’ website should include: i) information on the potential risk of increased charges due to the use of this type of services; ii) costs with these communications; iii) a direct link to BEREC database, that should be accessible through a public website with a direct, short and stable link/URL and include all information required under the Regulation in all official Union languages. Regarding the set-up of a database of numbering ranges for VAS and of a database of means of access to emergency services for roaming users, NOS considers that direct links for the databases would ensure correct, complete and up-to-date information, and would be the most (cost) efficient solution to avoid additional workload and development on the operators’ side. It would also avoid potential transposing errors. Additionally, forwarding the compiled information to be made available by BEREC would not require developing and adapting information systems, which tend to imply significant costs, tests and guarantee of operationalisation. Such burden should not be imposed in a context in which mobile operators have been facing a reduction in their revenues, while they are channelling efforts and investments in the deployment of 5G networks. Finally, this approach guarantees that the information provided is always up to date and that all roaming customers have access to the same information provided, regardless of their operator.

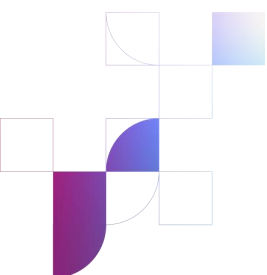
One **Contributor** comments on the first and fifth bullet points of GL 129. This Contributor considers that: a) concerning the information on the applicable roaming prices applying to a non-terrestrial network, this information should not be requested to those operators not providing roaming services on non-terrestrial networks, to avoid unjustified and unnecessary burdens to be applied to them; b) concerning the information about the potential risk of increased charges associated with value-added services, this **Contributor** considers it helpful that BEREC clarifies, first of all, what should be understood under value-added services, considering that every Member State has its own, in particular, what types of numbers are to be considered as premium services, freephone numbers and shared cost numbers. For instance, should the calls to the call centre also be considered as freephone numbers? Secondly, this **Contributor** considers it inappropriate to request operators to provide their customers with the information on value-added services by 1 July 2022, considering that the

BEREC database on such services will be established under the Regulation by 31 December 2022, and the related obligation for operators to provide such information is foreseen by the regulation itself only starting from 1 June 2023. Moreover, aligning the obligation to provide information on the value-added services with the one of the emergency services information that should be provided on 1 June 2023, after both databases on value-added numbers and emergency services are put in place by BEREC and will be fully operational is, in this **Contributor's** view, more coherent. Thirdly, as for the information request for roaming services on a non-terrestrial network, this **Contributor** considers that the obligation to provide information on value-added services on the welcome SMS should be provided only by those operators that offer such services to their roaming customers.

Considering all the above, this **Contributor** invites BEREC to:

- a) clarify in its Guidelines that the information on the prices for roaming services on non-terrestrial networks as well as the information on the potential risk associated with the use of value-added services should be requested and included in the welcome SMS only by those operators offering such services, for the reasons already mentioned above; and
- b) clarify that the obligation to include in the welcome SMS the information on value-added services should be implemented only starting from 1 June 2023, for the reasons provided above.

Additionally, this **Contributor** considers that a clarification of what type of value-added services are encompassed by the definition of premium services, freephone numbers and sharing cost numbers would be extremely useful.



BEREC Response:

BEREC considers that not all national emergency numbers (free of charge) may be technically feasible for roaming use. For this reason, each Member State should identify which national emergency numbers should be available when roaming and communicate them to the BEREC database so that operators can implement them and inform their roaming subscribers accordingly. BEREC considers that operators have to inform their roaming subscribers of those means of access to emergency services reported to the database. Therefore, GL 129 is amended to include this clarification related to EENA's comment: *"information about the possibility of accessing the emergency services by dialling 112 free of charge and any national emergency number specified by Member States and communicated to BEREC database as well as all other means of access to emergency services that are part of the BEREC database (only within the Union)"*.

In relation to the issues raised about VAS, guideline 129 remains unchanged. The Roaming Regulation entered into force on 1 July 2022 and since that date pursuant to Article 13 subpara 3 roaming providers must inform their customers about the potential risk of increased charges due to the use of value-added services by means of an automatic message.

- Additional obligation to inform about number ranges will be valid from 1 June 2023 after the BEREC database is set up at the latest on 31 December 2022 according to Article 16.
- Providing price information about VAS is not mandatory according to the Roaming Regulation, except for any charges applicable to freephone numbers while roaming, but BEREC plans to collect information on prices for VAS on a voluntary basis.
- The BEREC database including number ranges of VAS, which bears the risks of additional roaming charges, serves the roaming providers as source of information. The information to customers according to the Roaming Regulation needs to be provided by the roaming providers.
- Concerning the required definition of VAS, BEREC points out that VAS are not legally defined in the Roaming Regulation and it is not in BERECs remit to provide a legal definition for VAS. The NRAs are responsible for the data delivery and therefore should decide which number ranges are at risk of causing additional roaming charges (e.g. by means of their national numbering plan).

Guideline 132:

EENA considers that GL 132 is a notably important guideline for ensuring that end-users with disabilities can access emergency services, particularly where the means of access for such end-users diverges across Member States, by indicating those means of access that are technically feasible to roaming end-users.

Telefonica and **ETNO-GSMA** request for BEREC to clarify that the information to be provided to the end-user (and also the information in the database) should be limited to the services

mandated in each Member State and are technically feasible in roaming. Therefore, **Telefonica** requests the following amendment: *“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~~ including only those means of access that are **mandated in the Member State** and are technically feasible for use by roaming customers.”*

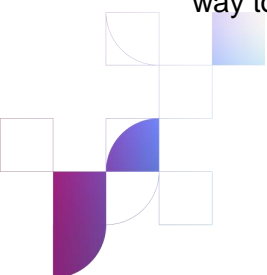
Liberty Global informs that according to Article 13 (1) Roaming Regulation the message received by roaming customers upon entering a Member State should include “a link to access, free of charge, a dedicated webpage providing up-to-date information about the types of services that may be subject to increased costs”. Article 15 Roaming Regulation should include a “link to access free of charge a dedicated webpage, accessible to people with disabilities, which provides information on alternative means of access to emergency services through emergency communications mandated in the visited Member State.”

Liberty Global notes that the text of the Regulation is not clear, whether these webpages can be zero-rated for roaming customers. The Guidelines do not provide further clarity on this question, with GL 132 largely restating the language of the Roaming Regulation. This creates significant legal uncertainty for roaming providers. Zero-rating of webpages or content is largely prohibited under the Open Internet Regulation (OIR). In the case that the Regulation and Guidelines do envisage the zero-rating of webpages containing information on VAS and emergency communications, it should be clarified that this qualifies as an exception under Article 3(3) of the OIR. This would reduce legal uncertainty for roaming providers, otherwise risking lack of compliance with either or both pieces of legislation.

However, because zero-rating is legally prohibited, most providers do not have systems in place to allow for zero-rating of webpages. Adjusting existing systems to allow for zero-rating of a small number of webpages is costly for providers. **Liberty Global** notes that it is also not clear that zero-rating these webpages will bring significant benefits to roaming customers – the majority of customers will only access these webpages once, if at all. As such, it is unlikely to have a significant impact on their overall data bundle.

Given the significant regulatory uncertainty, cost and limited customer benefit associated with zero-rating of these webpages, **Liberty Global** recommends BEREC to make clear that zero-rating of these webpages is not necessary. Ensuring the information is available on a webpage, which is not behind a paywall should be sufficient to ensure roaming customers have access to the information they need.

NOS informs that comments presented for GL 129 and GL146 are equally valid for the alternative means of access to emergency services, in which the operators' website would indicate the possibility of consulting what are these means by accessing the database prepared by BEREC with the same requirements indicated for VAS. Such an approach allows for harmonisation, simplicity in terms of implementation, correct, complete and up-to-date information and would be the most cost-efficient solution. **NOS** understands that the reference to the operators' page ensures access to information in the language in which the roaming provider communicates with the roaming customer, and the database must be developed in a way to be generically accessible to persons with disabilities.



Bouygues Telecom's comments on GL 132 are included in its comments on GL 138.

BEREC Response:

- The database is intended to be used by operators to inform their customers, therefore BEREC rejects the proposal made by NOS.
- BEREC considers that access to these websites must be free of charge. BEREC does not see any violation of the OI Regulation, as the Regulation foresees certain exemptions (see BEREC Open Internet Guidelines paragraph 81 and especially footnote 41).
- BEREC agrees to clarify GL132 according to the proposal made by Telefonica and ETNO-GSMA.

Guideline 133:

EENA notes in GL 133 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 Roaming Regulation, the automatic message received in that Member State should indicate the possibility to download the application enabling the receipt of public warnings from the link provided on the webpage. **EENA** welcomes the provision of such information, but strongly considers the use of mobile applications to be a complementary rather than a primary channel for enabling the receipt of public warning alerts as the need to download and configure an app is a significant barrier to achieving adequate levels of coverage and capacity pursuant to Article 110(2) of Directive (EU) 2018/1972. **EENA** would advise all Member States to adopt SMS and cell broadcasting technologies as primary channels for the dissemination of public warning alerts.

Liberty Global informs that in GL 133 when a public warning mobile application for the receipt of public warnings is reported in the database for a Member State under Article 16 Roaming Regulation, a link to this application should be included in the message received by roaming customers. **Liberty Global** supports this provision, however, it is not clear that a link to the application itself will be included in the database, rather than a mere report of the application's existence. **Liberty Global** urges BEREC to ensure that appropriate and working links to the relevant applications are also provided in the database. This will ensure providers are able to provide accurate information and links to roaming customers.

NOS provided comments on GL 133 which are included in its feedback on GL 132.

BEREC Response:

The type of warning system is mandated by the MS, a recommendation of BEREC would go beyond the obligations set out in the Roaming Regulation.

BEREC agrees that it is important for the database to be up to date and therefore will publish a procedural document together with the database to ensure that mechanisms are in place for NRAs to update the database when necessary.

Guideline 134:

Telefonica and **ETNO-GSMA** suggest the inclusion of the possibility of using automated machines to provide a similar service to an operator. Therefore, the text should be amended as follows: “**Roaming providers could use** ~~if using automated machines to comply with this obligation the home provider should ensure that the customer can quickly and easily access~~ **and to provide** the required personalised information”.

BEREC Response:

BEREC does not agree with the proposal as it is important that customers can quickly and easily access the information.

Guideline 137:

Concerning the information to be provided in the contract regarding the FUP, GL 137 states: “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 under 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 differ depending on the applicable FUP, see chapter D for the corresponding transparency specifications”. Regarding the inclusion in the contract of the calculation of roaming volumes, one **Contributor** believes that this requirement is excessively burdensome and not useful for the consumer. Furthermore, it should be noted that neither the Roaming Regulation nor the CIR relating to the FUP requires this information to be provided to the consumer. Furthermore, as regards the contractual information that differs according to the FUP applied (4-month mechanism, open bundle etc. ...), this request would entail a burden for operators who would have to provide various contract models for the consumer. This condition is envisaged neither by the Roaming Regulation nor by the CIR. Therefore, the use of a generic description in the contract of the various indicators that could be applied in case of anomalous and abusive use of the regulated roaming services is to be considered more than sufficient in terms of transparency. Considering all of the above, this **Contributor** asks BEREC to delete the final part of GL 137 relating to the calculation of the roaming volumes information and the differentiation of the contract information according to the applicable FUP, as it is not required by the Regulations.

BEREC Response:

BEREC considers it necessary for the providers to give the full information to the customer. These provisions are not new, but have been in place since 2017. Any change of this requirement can be discussed in the context of the Review of the CIR, so there is no need to change the GL for now.

Guideline 138:

Telefonica and **ETNO-GSMA** note that many contract modifications will have already to be completed before the adoption of these guidelines, creating a gap between the implementation of operator’s obligations and the further details provided on these obligations by BEREC. For

example, the third bullet point sets out that 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)*”. In addition, GL 139 states that “*therefore³ information about regulated roaming services could be provided in the contract summary template.*”

Therefore, **Telefonica** and **ETNO-GSMA** consider this to remain a simple recommendation, as the contract template has already been developed and utilised by roaming providers, and **Telefonica** would suggest to include this safeguard in the guidelines. **Telefonica** also requests that the Guidelines include the same wording as the Roaming Regulation to avoid misunderstandings. In this case, the guideline should include “*shall ensure*” and not “*must ensure*”, according to Article 8 (3) Roaming Regulation.

Bouygues Telecom informs that Article 8 Roaming Regulation provides for roaming providers to publish information on the reasons why roaming services are potentially offered on less advantageous terms than those offered at national level. This information should include factors that may have an impact on the quality of the roaming service to which the roaming customer subscribes, such as the network generations and technologies available to the roaming customer in a visited Member State. According to **Bouygues Telecom**, GL 138 sets out the expectations for information on quality of service and how it may differ depending on the country, the services available and also external factors (topography, traffic varying according to the timetable and period of the year, possible changes in equipment or temporary outages) both in the contract and also on the webpage to contain this information (GL 145). **Bouygues Telecom** remains very cautious about the reliability of the information that could be transmitted and the risk of incorrect information that could be communicated to the client, and would like clarification from BEREC. In addition, GL 145 provides that the roaming provider shall include a number of new information on its website from 1 July 2022, in particular on quality of service, which is not detailed and cannot be complied with by 1 July 2022, as the guidelines are not published. As further additional information is expected by 1 June 2023, it would be appropriate to provide all the information by that date. Among the new obligations relating to customer information, Articles 13 to 16 Roaming Regulation provide for the introduction of new means of information and the establishment by BEREC of a database containing numbering ranges for value added services by 31 December 2022 at the latest.

Bouygues Telecom adds that GL 132 provides for the service provider to include in the information message, from 1 June 2023, a free access link specifying the means of access to emergency services. **Bouygues Telecom** wishes to specify, in accordance with Article 16 Roaming Regulation, that BEREC is responsible for specifying, regularly updating and managing this list. Clarification on the frequency of updating this basis by BEREC and national authorities would also be welcome. With regard to GL 138 which provides for contractual changes, **Bouygues Telecom** would like to point out that contractual amendments will have already been made before the publication of those guidelines, which will create a gap between the implementation of the operator’s obligations and the additional details provided on those obligations by BEREC.

³ Telefonica would suggest to include at this point “***beside other contractual documents***” for the sake of completeness.

One **Contributor** comments on the last sentence of third bullet point of GL 138 (*“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”*). This **Contributor** considers it useful and agrees with the indication given by BEREC to include in the contract only basic information on how the quality of service may differ from services consumed domestically, and an explanation of relevant factors that can affect the said quality while roaming in the other Member States. However, for greater clarity, this **Contributor** considers it extremely helpful that BEREC provides concrete examples of such information to help operators in their implementation process. Therefore, this **Contributor** asks BEREC to provide operators with examples of basic information to be provided in the contract, in particular on the explanations to be provided on the factors that can impact the quality of service when the customers are roaming.

BEREC Response:

- As stated in GL 139, the information could be included in the contract summary template. BEREC agrees that this is a recommendation by BEREC and not a binding guideline. Since GL 139 addresses an example to provide roaming customers the relevant information according to Article 8 (3) Roaming Regulation, no adjustment of GL 139 in this regard is necessary.
- BEREC considers that the substitutes “shall” by “must” or “have to” do not change the meaning of the Guidelines. For the avoidance of doubt and because GL 138 quotes the wording of Article 8 (3) the “must” has been changed to “shall”.
- BEREC is of the view that no further clarification is needed with regard to QoS as the information on quality of the roaming services is in general descriptive. From BEREC’s point of view, the Roaming Regulations does not require hard facts such as thresholds for certain parameters as speeds, jitter, latency, etc. For transparency reasons, roaming customers in particular should be able to understand which influences the quality of roaming services. Therefore, BEREC does not see the necessity to amend the Guidelines in this regard.
- BEREC disagrees with Bouygues Telecom’s assessment about not having published information on operators’ websites about the quality of roaming services because the GLs were not finished until 1 July 2022.
- The later publication of the Guidelines does not exempt the roaming providers from the obligation to comply with the provisions of the Roaming Regulation.
- While BEREC shares the concerns and takes note of the gap in the timing of the entry into force of the Roaming Regulation and the corresponding guidelines, the guidelines nonetheless have a purpose to see that measures, which were implemented before the publication of the guidelines, have in any case to comply with the provisions of the Roaming Regulation. Based on the Guidelines the implementation of any measures prior to the publication of the guidelines can be “updated” or be improved.

Guideline 139:

Liberty Global notes that there are significant existing legal obligations regarding contract requirements. **Liberty Global** recognises the importance of ensuring that contracts are clear, concise and communicate all relevant information to customers. It is important that customers are not overloaded with unnecessary information to the detriment of their ability to understand the contract.

The purpose of the contract summary template under the EECC is to provide customers with a summary of the main terms of the contract so that consumers can more easily compare offers for services to make an informed choice. Operators have recently made big efforts to implement the contract summary template and integrate it into their provisioning systems. Requiring them to open this up to include the volume or quantity for calls, messages and data in the “services and equipment” section of the contract summary template – as suggested under GL 139 – is disproportionate as it deviates from the current practice, which only includes information on the FUP. It is also disproportionate as it provides an excessive amount of information to the consumer, undermining the usefulness and purpose of the contract summary template.

Liberty Global recognises that reliable, easily accessible, transparent and up-to-date information empowers end-users to make informed decisions. Providers know that the best way to do this is to present the most salient information in a brief, simplified format and at the right time. With such a wide range of information on a variety of relevant topics, it is important that providers do not overload consumers by providing too much information and that duplication is avoided. Moreover, the template should not seek to reproduce the whole (or majority) of the contract, or the product/service specifications. The relevant information is included in the contract, which is provided to the customer, in addition to other sources of information including the providers’ website. **Liberty Global** notes that the wording in GL 139 does not make this a mandatory requirement. **Liberty Global** urges BEREC to ensure that this does not become a mandatory requirement for the reasons outlined above.

Telefonica’s comments on GL 139 are included in its comments on GL 138.

BEREC Response:

As stated in Guideline 139, the information could be included in the contract summary template. BEREC agrees with Liberty Global that this is a recommendation by BEREC (see also response above).

Guideline 141:

Telefonica and **ETNO-GSMA** consider that the merger of the complaint procedures for FUP and QoS should be at the ultimate discretion of the roaming providers due to internal technical requirements and processes reasons (and, as added by **ETNO-GSMA**, complexity and cost). Depending on the specific implementation, the most efficient procedure could be to handle the complaints separately. **Telefonica** suggests the following amendments: *“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~~ **suggest** roaming providers to ~~efficiently~~ merge the FUP and the QoS complaint procedure **if they consider that it is more efficient.**

BEREC Response:

From the roaming customers perspective, BEREC is still of the view that a complaint procedure covering all roaming issues would be advantageous. Nevertheless, BEREC understands the roaming providers' concern about company specific implementation of complaint procedures. Therefore, BEREC amended GL 141 to underline that it is up to the roaming provider to decide whether merging the mandatory complaint procedure for international roaming due to internal business processes is appropriate for them.

Guideline 143:

Telefonica considers that current commercial practices keep roaming customers adequately informed through the contract information, the web sites, the Welcome messages etc. In **Telefonica's** experience, there is no justification to change the frequency of informing the customer, so **Telefonica** would request to keep twelve months as included in the current guidelines (GL 121): *"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~~ **twelve** months would constitute a reasonable interval, or any other shorter period associated with a contract renewal or revision."*

ETNO-GSMA considers that in the context of GL 143 (in which roaming providers should ensure that their roaming customers are kept adequately informed of data roaming charges), this is already done by different means e.g., contract, websites, bill shock prevention etc. Any additional requirement to inform the customer "every six months" would be unnecessary and burdensome.

BEREC Response:

BEREC amended the interval in GL 143 to 12 months, according to stakeholders' feedback.

Guideline 145:

Telefonica and **ETNO-GSMA** suggest to include "allowed" in the first bullet point of this Guideline for clarification purposes as follows: *"Each tariff plan and the types of services offered, including the volumes of communications **allowed**."*

ETNO-GSMA suggests that access to an operator's web page and customer service application should be allowed to be zero-rated. The dedicated information regarding VAS and

emergency services may also be published on the web page or in application of operators. Additionally, web pages and self-service applications are essential for customers who are abroad to allow them to manage their service or order additional package of roaming services.

Furthermore, **Telefonica** and **ETNO-GSMA** suggest, for the sake of simplicity, providing a generic list of which technologies are available in each EU/EEA country rather than specifying for each visited network: *“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.”*

Liberty Global agrees that transparency around available QoS and the impact it could have on specific types of content, applications and services is important to ensure that customers are adequately informed. However, some of the provisions related to transparency around QoS are disproportionate. **Liberty Global** believes that the requirement in GL 145 to provide information on QoS per available visited network is overly onerous for providers and provides very little additional benefit for customers. The parameters which determine QoS vary and are constantly evolving. Requiring the visited network to provide regular updates on QoS to roaming partners, or requiring roaming providers to constantly check QoS changes on visited networks, places a disproportionate burden on both – without clear consumer benefits that would outweigh these disproportionalities. In addition, information on some of the parameters which impact QoS, e.g. information on network upgrades, may be commercially sensitive. Requiring disclosure of commercially sensitive information could have negative impacts on competition, it is disproportionate and there is no clear benefit outweighing the negative impact. **Liberty Global** believes that providing more general information on the network generation and QoS available per visited country, provides customers with the information necessary to understand the availability and useability of services and applications while roaming, while avoiding a disproportionate burden for both the roaming provider and visited network.

One **Contributor** comments on the third bullet point of GL 145: this **Contributor** would like to highlight to BEREC that the information on value-added numbers cannot be provided by operators on their websites already on 1 July 2022, considering that the possibility to do so is linked to the creation of the BEREC database foreseen by the Regulation on 31 December 2022. Furthermore, the Roaming Regulation is clear in this regard, when it establishes in Article 24, that *“the obligations of roaming providers to provide information on the number range for value-added services (...) as regards the information contained in the databases (...), apply from 1 June 2023”*. This **Contributor** also provides comments on the fourth bullet point of GL 145: Concerning the additional information on the quality of service to be provided on the website, this **Contributor** would like to stress that such detailed information is complicated to provide by the operators for the following reasons:

a) It is extremely complex to provide on the website for each country visited and for each host network, the generation or network technology available, as the roaming provider can use different mobile operators to provide roaming services in the single host country. For instance, in the same country, the roaming provider can rely on different mobile networks to provide its customers with roaming services. This would imply that the roaming provider should list on its website for all countries, the generations and technologies of all the different networks it is using to provide its roaming services. Such a request would be extremely burdensome for the

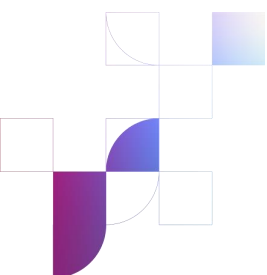
roaming provider, particularly considering that it will be obliged to continually update its website with each change of generations or technologies of the different mobile operator's networks it uses in the host country.

b) Concerning the other information relating to the download/upload speed or quality of service parameters that may impact the use of the content and applications, this **Contributor** would like to stress that this obligation is difficult to implement for the roaming provider, since it has no control over the host network's performances and cannot have real-time knowledge about all the potential problems in term of congestion of the network or experienced by the visited network. Requiring the roaming provider to list all elements that could impact the quality of service and the use of content and applications in roaming in such a detailed way, is not realistic. Furthermore, it would raise more issues between operators and customers, and increase the possibility of disputes.

Considering all the above, this **Contributor** invites BEREC to:

- a) Change the requirement of providing the information on value-added numbers in the welcome SMS and on the website from 1 July 2022, to 1 June 2023, in compliance with the Roaming Regulation;
- b) Clarify that the information on the website related to the quality of service should be provided - as for the information in the contract - in a more generic way. This **Contributor** believes, indeed, that a more generic sentence giving customers the basic information that the quality of the roaming services in the other member states could differ from that provided on the national territory, in terms of connection speed and latency and for reasons related to the coverage and congestion level of the host operator's network is far more effective in terms of transparency and clarity than providing customers with a list of elements that can impact their roaming experience abroad;
- c) Not requesting operators to list on their websites all the generations and technologies networks used in the different countries, but just providing again a generic sentence informing customers on which generations and technologies they are availing themselves to offer them the roaming services, for the reasons already provided above.

Bouygues Telecom's comments on GL 145 are included in its comments on GL 138.



BEREC Response:

BEREC does not take into account volumes “allowed” in the first bullet point of GL 145 as the information mentioned in Article 8 (3) (a) Roaming Regulation relates to the included volumes of communication. In addition to that information, roaming providers have to inform about any restriction imposed on the consumption of regulated roaming services. This information targets the allowance of roaming services (application of FUP).

As stipulated in the Roaming Regulation, specific information provided on the roaming providers’ website has to be accessible free of charge without infringing other obligations. As the provision of this information as required by the Roaming Regulation must be free of charge, this means a legally standardised exception (see BEREC Open Internet Guidelines).

BEREC rejects the suggestion that with regard to the quality of regulated roaming services, roaming providers solely have to publish general information about the technologies available in the EU/EEA. This would not improve transparency for the customers. In addition, information about available mobile network technologies per country per roaming partner is already widely available and seems to be a good and accepted practice.

Regarding the information for roaming customers concerning the risk of additional roaming charges, BEREC makes clear that since 01 July 2022 roaming providers have to inform their customers about the potential risk due to the usage of e.g. shared cost, free of charge and premium rate numbers. The obligation for roaming providers to inform about number ranges for VAS applies from 1 June 23 after the necessary databases are established by BEREC.

In summary, Guideline 145 is not changed.

Guideline 146:

EENA welcomes GL 146 requiring all roaming providers’ websites, as of 1 June 2023, to contain information on alternative means of access to emergency services in the visited Member States. Moreover, given the divergence in methods of access that currently exist, the requirement to indicate only those means of access that are technically feasible, 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, is vitally important. **EENA** would like to reiterate its consideration and advice, provided in relation to GL 133, on the use of mobile applications for enabling the receipt of public warning alerts.

Telefonica notes that its comments on this guideline have been included in its feedback on GL 132.

NOS’s comments on GL 146 are included in its comments on GL 129 and GL 132.

BEREC Response:

See BEREC response to Guidelines 129 and 132.

Guideline 153:

Contributor 2 notes that the FUP based on the objective indicators of consumption and presence clearly refers to a time window analysis of at least four months. A period of 2 weeks could not be assumed in any way a suitable time to verify the customer compliance with the principle of RLAH. The alert windows of 2 weeks and the related check (on the last 4 months before the end of the 2-week alert window) is introduced to avoid the case highlighted in GL 150 referring to cases “*where the non-domestic presence and usage of the roaming customer is only slightly in excess of 50% over the observation window* “. A check performed over only 2 weeks (as suggested in GL 153) cannot properly safeguard roaming providers from customer abusive behaviour. Such an interpretation of the rule will allow customers to consume and stay permanently in an EU Member State for 4 months, move (or simply move the SIM) in the “domestic” country for 2 weeks and start again a 4-month period of consume and presence abroad. Moreover, the impossibility to apply retroactively any surcharge to the traffic performed in the 4 months window triggering the alert, but only on the future traffic, substantially hampers the capability of such FUP to act as a deterrent for abusive behaviour. With the interpretation currently described in GL 153 a customer could stay more than 8 (or 11 (4+4+2) months abroad with only 4 (2+2) weeks in the domestic country, without experiencing any surcharge. Contributor 2 request following amendment: “*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 last four months before the end of the alert period of at least two weeks***”

BEREC Response:

The proposal goes beyond the provisions of the Roaming Regulation, hence the proposal is rejected.

Guideline 157:

Telefonica and **ETNO-GSMA** suggest highlighting the technical restrictions that roaming providers might face when implementing the cut-off mechanism: “*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 **subject to objective technical restrictions relevant to the proper identification of the non-terrestrial mobile networks***”.

BEREC Response:

BEREC partially takes this comment into account by changing the Guideline as follows: “*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 **if the visited network and/or non-terrestrial network provides the real-time monitoring of usage***”.

Guideline 169:

One **Contributor** notes that the aim of the additional default financial limit of 100 Euros is to avoid roaming customers paying excessive prices when using their data abroad. Both default limits of 50 and 100 Euros were set to avoid bill shocks. Nevertheless, the **Contributor** considers that the additional default limit should not be implemented by those operators providing customers – opting for a standard financial limit of 50 Euros – other financial limits in compliance with Article 14 (4) Roaming Regulation, expressly stating that *“the default limits (...) shall be applicable to all customers who have not opted for another limit”*. This implies that, if the roaming provider foresees a mechanism through which the roaming customer once reached the standard limit of 50 Euros, can “re-enable” data traffic in roaming (with near-real-time mode) only by requesting to change the threshold, namely by sending a specific SMS choosing from the higher alternative financial limits proposed by the roaming provider, there is no necessity for such a roaming provider to implement the additional default limit of 100 Euros, considering that:

- a) The customer, being in a certain way “obliged” to choose from alternative higher financial limits proposed by the roaming provider to re-enable its data traffic in roaming, is already fully protected from any possible bill shock and there is no need for further additional 100 Euros default financial limit.
- b) The introduction of an additional default financial limit of 100 Euros, when other financial limits already exist, would entail additional unjustified charges for operators that are already protecting their roaming customers from bill shock through the choosing of other alternative higher financial limits.

Considering all of the above, the **Contributor** invites BEREC to clarify that the obligation of an additional default financial limit of 100 Euros is only required for operators that do not provide other alternative financial limits above 100 Euros and allow their customers not to opt for any of them.

BEREC Response:

The regulation requires that operators have to offer this 100 Euro limit in addition. BEREC is of the view that there is no room for flexibility, hence the proposal is rejected.

Guideline 175:

Telefonica and **ETNO-GSMA** suggest to delete the expected requirement that roaming providers will make technically feasible efforts to preserve any data that was in the course of being downloaded, because this mechanism is not commonly implemented in any network for any service and this would be overly burdensome. “[...] ~~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~~”.

BEREC Response:

BEREC rejects the proposal as it has been part of the previous Guidelines and the updated Regulation has not changed in this regard. Furthermore, NRAs have not received any complaints about this in the past.

13. Comments on Inadvertent roaming (GL 177)

Guideline 177:

Telefonica and **ETNO-GSMA** consider that the concept of “*potential harm*” is not adequate for this context, the Regulation does not specifically mention it and can be interpreted very broadly. **Telefonica** suggests the following change in the wording to clarify what is under the responsibility of the roaming provider: “*Roaming providers should take all reasonable steps to **guide customers how to** ~~reduce potential harm to customers from~~ **avoid inadvertent** breaching of FUP limits or indicators in the Union or surcharges when connecting to third country or non-terrestrial networks due to inadvertent roaming*”. **ETNO-GSMA** consider that this sentence should be changed to: “*Roaming providers should take all reasonable steps to **guide customers how to avoid** breaching of FUP limits or indicators in the Union or surcharges when connecting to third country or non-terrestrial networks due to inadvertent roaming*”.

BEREC Response:

BEREC takes note of the comment and amended the wording as proposed by ETNO-GSMA.

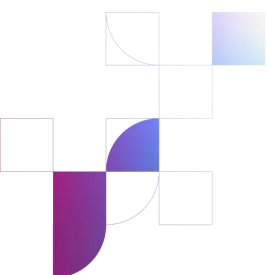
14. Comments on Non-terrestrial public mobile networks (GL 178-183)

Guideline 179:

Contributor 2 notes that price caps on retail levels have been abolished with the Regulation, therefore requests to delete it from the GL 179 wording.

BEREC Response:

BEREC considers that the GL is necessary as it makes clear that there is no price regulation for roaming in non-terrestrial networks in place.



15. Comments on Value-added services (VAS) (GL 184-186)

Guideline 184:

NOS comments both on GL 184 and GL 185 and points out that in addition to what is mentioned in GL 184 (*"The bundled price is fully billed by and paid to the roaming customer's roaming provider"*), VAS communications are also billed in an integrated way at the wholesale level. Therefore, **NOS** requests clarification from BEREC, preferably with examples, of cases that may fit to what is referred in GL 185, namely that the rules of the Roaming Regulation should be applied to the tariff component corresponding to the connection to such services. Finally, it should be furthermore clarified, that in case of calls where the VAS or the beginning of the VAS in call cannot be differentiated from the voice service, this should be treated as one call to a VAS (e.g. roaming providers cannot detect the part of a call to a hotline, where the customer is still waiting to be connected in a queue and therefore such calls should be treated and charged as one call to the hotline including the VAS).

BEREC Response:

BEREC understands the reference in recital 37 of the Roaming Regulation about a split charge (for connection and service) as a reference to, for example, premium rate services, where the customer can buy services like parking, tickets for the cinema, audiobooks etc., and pay for this service on the mobile bill. Such a service might be billed where the service and the connection is split. However, recital 37 acknowledges that also communications to other VAS like freephone numbers or shared cost numbers might incur increased cost for end users while roaming. In cases where there is no split tariff, the communication can be treated as one call to a VAS where additional charges while roaming could incur.

BEREC has adjusted Guideline 186 in order to clarify this.

Guideline 185:

Telefonica requests the modification of the wording in order to reflect more accurately the obligations for roaming providers and to avoid misinterpretation: *"Roaming providers should ensure that customers are informed about ~~how any expenditure related to VAS is charged and controlled~~ possible increased charges for VAS. 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 GL 138, 145 and 146) and to implement the transparency measures related to VAS (see also chapter M section a)."*

ETNO-GSMA suggests that to avoid any misinterpretation or disproportionate obligation, the text should be modified as follows: *"Roaming providers should inform customers about possible increased charges for VAS."*

Contributor 2 agrees on the statements reported in GL 185, but these do not clarify what to do in cases where the price for the connection is joint with the cost of the service. For instance, for calls with one price only, joining the connection and the service prices should be treated

outside of the Roaming Regulation. The roaming provider should only inform customers that they could pay more than for a standard call, due to the service component for the overall price that is under full control of the VAS provider and not of the roaming provider. **Contributor 2** adds that in a general sense, a better definition of what are VAS numbers should be included. **Contributor 2** therefore requests the following deletion in the guideline: *“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.”*

NOS' comments on GL185 are included in its comments on GL 184.

BEREC Response:

- BEREC agrees with the proposal from Telefonica and ETNO-GSMA and adjusted the Guideline in line with their proposal.
- Regarding Contributor 2's comment on cases where the price for the connection of the service is joint with the cost of the service, BEREC took this comment into account with the changes in GL 186.
- The Roaming Regulation does not include a definition of value-added services. BEREC considers GL 184-186 to give sufficient guidance in order to implement the price controls and transparency obligations that should apply for such services.

Guideline 186:

Telefonica and **ETNO-GSMA** suggest to delete this guideline as it goes beyond the legal scope of the Regulation and thus the scope and purpose of these guidelines. If BEREC does not agree with this interpretation and thus deem this compatible with the legal texts, **Telefonica** and **ETNO-GSMA** would respectfully insist on a further dialogue. The obligation as included in the draft Guidelines to mandate regulated prices, both for wholesale and retail, for value-added services for which there is not a split charge, is not straightforward to interpret or implement, and in their view creates uncertainty rather than clarity. It is also a departure from the approach of using transparency measures, rather than regulated prices, to address the problems identified.

BEREC Response:

BEREC agrees with Telefonica and ETNO-GSMA. Guideline 186 is changed in order to respond to the comments and not extend the legal scope.

16. Comments on Handover between mobile communications networks (GL 187)

Guideline 187:

Telefonica considers that the contract is not the appropriate tool to inform the customers about handovers. Besides, this provision is not foreseen in the Roaming Regulation. Telefonica requests the deletion of the following paragraph: *"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)".*

ETNO-GSMA comments on the following sentence: *"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 – GL25)."* **ETNO-GSMA** considers it should be specified that the coordination between national administrations and operators is only provided as an example of possible action. It would be helpful to add footnote 18 in the draft of the BEREC Wholesale Guidelines regarding the charging of seamless handover mentioned also in the Retail Roaming Guidelines: *"For example, when initiating a call in the home MS and continue it while travelling from the home MS to a visited MS, the charging of this call will not shift from intra-EEA to RLAH when crossing the border."*

BEREC Response:

- BEREC considers that one of the goals of the Roaming Regulation is to provide more transparency to customers, therefore BEREC considers it a good practice to inform also about the pricing in case of automatic handovers.
- Regarding the comments about the charging and which prices apply, BEREC considers this to go beyond the Roaming Regulation, as the definitions of a roaming call and an intra-EEA call do not allow for this.

17. Comments on Machine-to-machine (M2M) communications (GL 188-190)

Guideline 189:

EENA considers it extremely important for GL 189 to explicitly set out that M2M communications are not excluded from the Roaming Regulation. As technology continues to develop, some devices, applications and innovative M2M services may have a capability to contact emergency services, using a voice or data connection, on behalf of an end-user. It is essential that equal treatment (i.e. free-of-charge access and free-of-charge provision of caller location information) is available for those devices relying on roaming services. BEREC notes that it is common for such devices to be used on a permanent roaming basis and **EENA** would further note that the eCall service, mandatory in all new type passenger vehicles in the EU

since 1 April 2018 (in accordance with Regulation (EU) 2015/758) also relies predominantly on devices used on a permanent roaming basis. It is essential that the eCall service is not hindered in any way through the application of surcharges or restrictions by any networks the service relies on. Otherwise, it would be a breach of that Regulation and of Article 109 of the EEC where access to emergency services through emergency communications is enshrined as a requirement on electronic communications service providers and a right of all end-users.

Telefonica acknowledges that the obligations related to the provision of regulated retail roaming services, RLAH, are described the relevant sections of the Guidelines. **Telefonica** considers that the reference included in this section, Machine to Machine communications, may be out of context and may lead to misunderstandings. Therefore, **Telefonica** requests the deletion of the following paragraph: *"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."*

BEREC Response:

As regards EENA's comment, BEREC considers the eCall system to be an emergency system for the purposes of charging within the context of the Roaming Regulation. Although eCall may be activated or transmitted automatically, it is not considered an M2M service in this context, because its main purpose is to establish a contact between the occupants of the vehicle and the nearest PSAP. Therefore, communications established under the eCall system are emergency communications and should be free of charge as indicated in the GL 105 and 106.

As regards Telefonica's comment, recital 21 RR states that M2M communications *"are not excluded from the scope of this Regulation or the relevant wholesale roaming access obligations laid down in this Regulation, including the provisions on fair usage of roaming services and the possibility for mobile network operators of including in their reference offers conditions to prevent permanent use of regulated roaming services or the anomalous or abusive use of wholesale roaming access"*. For this reason BEREC considers that the provision of M2M communications services with roaming enabled are subject to the RLAH regime.

Guideline 190:

Contributor 2 notes that even, if Article 14(5) Roaming Regulation does not refer to Article 14(3), it is clear that the same reasons allowing the non-application of Articles 14(2) and 14(4), that is the absence of human intervention to understand and reply to the informative messages, apply straightforward to the informative messages related to expiry of the roaming data allowance. In the view of Contributor 2, the roaming data allowance mechanism should be left untouched as a safeguard measure for roaming providers, but no obligation to send informative SMS on roaming data allowance expiration and related surcharge applied to further data traffic will apply in case of M2M SIMs. For the same reason, all the transparency provisions related to voice and SMS services do not apply to M2M SIMs using voice or SMS services (like SIMs used for Ecall services), due to the absence of human intervention to

understand and reply to the informative messages. **Contributor 2** therefore requests the following addition: “*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), **provision of information on roaming data allowance expiration and related surcharge applied (article 14(3) Roaming regulation)** or financial limits (Article 14 (4) Roaming Regulation) do not apply to M2M devices which use mobile data communications or voice and /or SMS services*”.

BEREC Response:

As regards Contributor 2's comment, BEREC cannot accept this proposal because it involves interpreting something that the Roaming Regulation does not say. The transparency exceptions for M2M communications are clearly set out in Article 14 (5) Roaming Regulation, so that the roaming provider does not have the obligation to send an SMS to inform about the basic personalised tariff information on charges (Article 14 (2) Roaming Regulation) and financial limits (Article 14 (4) Roaming Regulation).

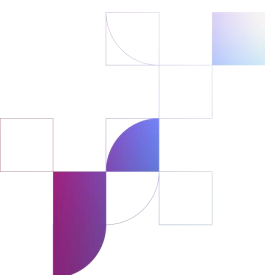
18. Comments on Sustainability (GL 191-208)

Guidelines 191-208:

In its comments on all guidelines related to sustainability (point S), **ETNO-GSMA** asks for a clear statement from BEREC confirming that the implementation of additional fees based on consent from the regulator is a change of contract which results from the implementation of the Roaming Regulation. Lack of such a statement will not allow roaming providers to implement the sustainability mechanism in post-paid offers as in some countries, the regulator treats the implementation of surcharges as a commercial decision and gives the right to churn without refund of granted financial benefits. As a result, operators who apply for surcharge will not be able to recover the costs as they will be able to implement this surcharge only for pre-paid and new contracts for post-paid (NRA decision is valid only 12 months).

BEREC Response:

BEREC does not agree with the argument presented. Asking for a derogation will trigger an extra-ordinary right for customers to cancel the contract, as this is done based on the initiative of the operator not the regulator or the regulation.



Annex - List of received contributions

Name of the contributor	Country	No. of pages
Bouygues Telecom	France	3
ETNO GSMA		10
Liberty Global	United Kingdom/Netherlands/USA	4
EENA	Belgium	4
MVNO EUROPE	Belgium	3
NOS Comunicacoes, S.A,	Portugal	6
Contributor		12
Section of Electronic Communications Operators (SOEK)	Slovenia	1
Telefonica	Spain	9
Contributor 2		18