



ETNO-GSMA response to the public consultation on the draft BEREC guidelines on Regulation (EU) 2022/612 and Commission Implementing Regulation (EU) 2016/2286 (Retail Roaming Guidelines)

Introduction

ETNO and the GSMA, who represent the telecoms sector in Europe, welcome the opportunity to comment on BEREC's Draft Retail Roaming Guidelines. ETNO and the GSMA hope the following detailed comments can serve as a constructive contribution to BEREC's deliberations on its draft Guidelines. We stand ready to elaborate - and enter into further dialogue on any of our points made below.

We note that the final Guidelines will not be published until the end of this year. Given the importance of the Guidelines for the implementation of the new Roaming Regulation and the gap between such adoption and the effective date of the Regulation itself, we request some flexibility until 1/6/2023 (in line with the due date for information of BEREC databases to be added in automatic message) in terms of timing to comply with these guidelines. We also consider that any guidelines related to the obligations that already come 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.

Application of Roam-Like-At-Home (RLAH)

As a general comment, we consider that, when the Guidelines refer to certain recitals or articles of the Regulation, the same wording should be included. This will avoid introducing confusion or misunderstanding. In particular, we request BEREC to include in **Guideline 11** the same wording as in Article 4 (2) and in Recital 27, or just include direct references to these provisions.

In this respect, the new **Guideline 11** on QoS supposedly aims at covering the multitude of possible scenarios and is therefore becoming too prescriptive while still staying on a too high level to prevent complications, not making much clarification on top of the text of 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 a vis* the term "*newer network generation or technology*" used by Recital 27 of the Regulation.

BEREC states in **Guideline 13** that *“any other sanctions (e.g., withdrawal of roaming services) are not in line with the Roaming Regulation”*. ETNO-GSMA would suggest modifying the wording as follows to allow for a more positive approach:

*“Any other **measure should be** in line with the Roaming Regulation”*

Fair use policy

In relation to **Guideline 21**, we suggest that the operator gets flexibility in terms of response, as well as the possibility to require some evidence from the end-user. For example, instead of changing FUPs, which will be a complex and costly process from the IT perspective, a roaming provider may decide to offer special extraordinary data and voice allowances for free or decide to take the case into consideration when resolving complaints (after reviewing all the circumstances). In our view, such recommendation could be used to circumvent FUP and should be considered on a case-by-case basis. The text beginning *“Exemptions to the applicable FUP...”* should therefore be amended 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.**”*

In respect of **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. We consider that the latter would be more appropriate.

Further, we suggest deleting the third sub-bullet of the first bullet point in **Guideline 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. We therefore suggest 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 provides several examples in **Guideline 64** for the calculation of the roaming data allowances (assuming a wholesale cap of 2 euros per GB). 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.

We also note that there is a change in wording in **Guideline 59** 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, and we suggest maintaining the original wording to ensure consistency and predictability.

Alternative tariffs

In the context of **Guideline 99**, ETNO-GSMA consider that there is no rationale for the provision of additional information to the customer due to the entry into force of the Regulation. This is not a requirement of the Regulation, and it is burdensome for operators. It should ultimately be left to the roaming providers to determine the appropriate approach. We therefore consider that the text *“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”* should be deleted.

Transfer between roaming tariffs

Regarding **Guideline 100**, we fully support 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.

Charges for emergency services

In the context of **Guidelines 105 and 106**, ETNO-GSMA would request that the differentiation between emergency services that are free of charge and those that are not necessarily free of charge (different means of access to emergency services) is made clear. In addition, 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 **Guideline 105** and noting that although there is already a reference to article 109 of the EECC 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.

Furthermore, and in relation to **Guideline 106**, a reference to the availability of the EC 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.

Charges in currencies other than the euro

Regarding **Guideline 111**, ETNO-GSMA suggest that BEREC specifies that any adjustments which relate to changes in currency exchange rates, as described in Art 1 (4) are made because of changes which result from implementation of Roaming Regulation. End users should not be allowed to churn without repayment of granted financial benefits. Such specification is necessary for operators outside the Euro zone to have the right to compensate decreased value of their currencies.

Regarding **Guideline 114**, ETNO-GSMA notes that this mechanism is not provided by the Regulation according to which the method under **Guidelines 109** is valid. The delegated regulation does not apply to retail. Some operators have already changed their contracts to comply with Article 1(4) of the Regulation and a further change based on the proposed Guideline 114 should not be mandated.

Transparency measures (120-176)

Regarding **Guideline 120**, ETNO-GSMA considers that as long as the emergency SMS is not opt-out, 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”

BEREC should 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 have also been excluded from the rule to send other Transparency SMS in the roaming regulation.

Regarding **Guidelines 123 and 124**, ETNO-GSMA notes 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 of the Roaming Regulation) should be simplified and harmonised. We 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”.

BEREC states in **Guideline 125** that for users of laptops with dongles or similar devices *“the roaming provider should send one message to provide all of the required information.”* BEREC further states in **Guideline 127** 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.)”*. It is currently unclear as to the exact information to be provided. In addition, article 42 mentions that the obligation does not apply to devices that do not support SMS.

In relation to **Guideline 126**, ETNO-GSMA considers that information provided at the point of first connection could be sufficient when it is feasible to provide all the mandatory information relevant to customer’s tariff (since some tariffs may offer only data or only voice/SMS), instead of sending information when there is a call and subsequent information when there is a data session. It should be noted in this respect that both can occur at the same time with IP.

In the context of **Guideline 132**, we request that BEREC makes clear that the information to be provided to the end-user (including the information in the database) should be limited to the services that are mandated in each Member State and technically feasible during roaming. We therefore suggest the following amendment to the bullet point of this Guideline:

“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 **including** only those means of access that are **mandated in the Member State** and are technically feasible for use by roaming customers.”*

BEREC states in **Guideline 134** that *“If using automated machines to comply with this obligation, the home provider should ensure that the customer can quickly and easily access the required personalised information.”*. ETNO-GSMA suggests including the possibility of using automated machines to provide a similar service to an operator and that the text is modified as follows:

“Roaming providers could use automated machines to comply with this obligation and to provide the required personalised information”

On **Guideline 138**, many contract modifications will have been already done before the finalisation of these guidelines, creating a disconnect between the implementation of operator’s obligations and the details provided on the guidelines by BEREC. For example, BEREC states in the third bullet point that it *“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, **Guideline 139** states that *“information about regulated roaming services could be provided in the contract summary template.”* We consider that this should remain a simple recommendation as the contract template has already been developed and utilised by the majority of operators.

BEREC states in **Guideline 141** that *“where roaming providers have implemented a FUP, BEREC encourages roaming providers to efficiently merge the FUP and the QoS complaint procedure.”* ETNO-GSMA considers that such a merging should be at the ultimate discretion of the operators due to internal technical requirements and for process reasons (complexity and cost).

In the context of **Guideline 143** in which roaming providers should ensure that their roaming customers are kept adequately informed of data roaming charges, we note 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.

For **Guideline 145**, we also suggest that “allowed” should be added to 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**”*

With reference to **Guideline 145**, we suggest that access to 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 page and self-service application are essential for customers who are abroad to allow them to manage their service or order additional package of roaming services.

Furthermore, we 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 guest 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"~~

For **Guideline 157**, we suggest highlighting the technical restrictions that providers might face:

~~"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**"~~

Financial or volume limit on data roaming consumption

For Guideline 175 we suggest deleting the expected requirement that providers will make technically feasible efforts to preserve any data that was in the course of being downloaded, because we believe this is overly burdensome, if any such mechanism exists at all.

~~"[...] 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"~~

Inadvertent roaming

Guideline 177 states that *"Roaming providers should take all reasonable steps to reduce potential harm to customers from breaching FUP limits or indicators in the Union or surcharges when connecting to third country or non-terrestrial networks due to inadvertent roaming"*. 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”.*

We note that the Roaming Regulation does not specifically mention “potential harm” and that such a term could be interpreted very broadly.

Value-added services (VAS)

BEREC states in **Guideline 185** that *“Roaming providers should ensure that customers are informed about how any expenditure related to VAS is charged and controlled”*. 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”.

As for Guideline 186, ETNO-GSMA suggest deleting this guideline as it in our view goes beyond the legal scope of the Regulation and thus the scope and purpose of these guidelines. If BEREC would not agree with this interpretation and would thus deem this compatible with the legal texts, we would respectfully insist on a further dialogue. The obligation as included in the draft Guidelines to mandate regulated prices, both on wholesale and retail, for value-added services for which there is not a split charge, is not straightforward to interpret or implement, and in our 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.

Handover between mobile communications networks

Guideline 187 states that *“National administrations and operators can conclude spectrum coordination agreements and ensure coverage, at least along 5G corridors and terrestrial transport paths (see BEREC Wholesale Guidelines – Guideline 25)”*. ETNO-GSMA considers that 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 the footnote 18 regarding the charging of seamless handover mentioned in the draft of the BEREC Wholesale Guidelines also in the retail 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.”

Sustainability

About the Guidelines related to Sustainability (point S), we ask for a clear statement from BEREC, that implementation of additional fees based on consent from the Regulator is a change of contract which results from implementation of Roaming Regulations. Lack of such statement will not allow to implement Sustainability mechanism in post-paid offers as in some countries Regulator treats implementation of surcharge as 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 surcharge only for pre-paid and new contracts for post-paid (NRA decision is valid only 12 months).



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About ETNO

ETNO (European Telecommunications Network Operators' Association) represents Europe's telecommunications network operators and is the principal policy group for European e-communications network operators. ETNO's primary purpose is to promote a positive policy environment allowing the EU telecommunications sector to deliver best quality services to consumers and businesses.

About GSMA

The GSMA is a global organisation unifying the mobile ecosystem to discover, develop and deliver innovation foundational to positive business environments and societal change. Representing mobile operators and organisations across the mobile ecosystem and adjacent industries, the GSMA delivers for its members across three broad pillars: Connectivity for Good, Industry Services and Solutions, and Outreach.

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