

## Telefónica's contribution on the draft BEREC guidelines on the application of Article 4 (3) and Article 8 (6) of Regulation (EU) 2022/612 of 6 April 2022 on roaming on public communications networks within the Union (Retail Roaming Guidelines).

On 13 April 2022, *Regulation (EU) 2022/612 of the European Parliament and of the Council of 6 April 2022 on roaming on public mobile communications networks within the Union* was published. According to Articles 4 and 8 of this Regulation and in order to contribute to the consistent application of Articles 4, 8, and the transparency measures referred to in Articles 13, 14 and 15, BEREC should, after consulting stakeholders and in cooperation with the Commission, update its retail roaming guidelines. BEREC is required to publish these revised guidelines by 1 January 2023.

Telefónica welcomes the opportunity to comment on the BEREC Guidelines and to provide a constructive contribution. In our view, the guidelines should be updated according to the Regulation while providing a proportionate guidance and a consistent application in all the Member States. We note that the Guidelines will be adopted by 1st January 2023 and therefore there is a gap between such adoption and the entry into force of the Regulation. It should be considered that obligations that came into force on 1st July 2022 have already been implemented by operators and therefore some flexibility will be required during an adequate transition period, i.e., until 1st June 2023 (entry into force of certain transparency measures).

Additionally, we see no need in the review of the overall tone of the wording. The draft substitutes "shall" by "must" or "have to" in several guidelines (for example guidelines 14, 15, 80, 101, 138). According to our experience in the roaming market there is no need for such change, and therefore we would request to keep the current wording as it is perfectly valid.

### Geographical scope of the Roaming Regulation

#### Guideline 7

In relation to the measures applicable to non-terrestrial services, Telefónica considers that it should be specified in the guideline that only certain measures in Articles 13 and 14 apply. Therefore we would suggest 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."*

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

### Guideline 11

As a general comment, Telefónica considers 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 would request to include in Guideline 11 the same wording as in Article 4 (2) and as in Recital 27, or just include direct references to these provisions.

### Guideline 13

We would suggest to review the wording to a more positive approach and to allow the implementation of specific measures intended to prevent the 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.**”*

## Fair use Policy

### Guideline 21

We would suggest that the operator should get flexibility in terms of response and should have the possibility to require 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.**”*

### Guideline 59

We also 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 we would suggest maintaining the original wording to ensure consistency and predictability.

## Guideline 64

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.

## No documentary evidence of residence or stable links

### Guideline 81

For the guideline to reflect the requirements of Art. 4 CIR, we would suggest 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 Guidelines 27 to 32) and the customer does not provide **sufficient proof**it, the roaming provider can apply roaming surcharges for that customer's consumption of regulated retail roaming services."*

## Alternative tariffs

### Guideline 99

Telefónica considers 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 provider's criteria.

*"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."*

## Charges for emergency services

### Guidelines 105 and 106

Telefónica 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 order to avoid misunderstandings, we would suggest either to refer to Article 109 of the Code or to include the same wording.

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.

We would request the following amendment:

*“105. Article 109 of Directive (EU) 2018/1972 grants to all end-users the right to access to emergency services, free of charge, through emergency communications to the most appropriate public safety answering point (PSAP). In order to ensure that, roaming providers shall not levy on roaming customers any charges related to ~~any~~ type of emergency communications **emergency services mandated by Member States** to the most appropriate PSAP initiated by the roaming customer or to the transmission of caller location information.”*

Furthermore, and in relation to Guideline 106, a reference to the availability of the EC implementing Acts foreseen by article 109 of the Code should be included.

## Charges in currencies other than the euro

### Guideline 114

Telefónica notes that this mechanism is not provided by the Regulation according to which the method under guideline 109 is valid. The delegated regulation does not apply to retail. In case an operator has already changed their contracts to comply with Article 1(4) of the Regulation, a further change on the basis of the proposed Guideline 114 should not be required.

## Transparency measures

### Guideline 120

Telefónica 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”.*

### Guidelines 123 and 124

Telefónica 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”.*

## Guideline 129

Telefónica would request 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.”***

## Guideline 132

Telefónica would like to request that BEREC makes clear that the information to provide to the end-user (and also the information in the database) should be limited to the services that are mandated in each Member State and are technically feasible in roaming.

We would request 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.”*

## Guideline 134

Telefónica would 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”.***

## Guidelines 138 and 139

Telefónica notes that many contract modifications will have been already done before the adoption of these guidelines, creating a disconnect between the implementation of operator's obligations and the further detail provided on these obligations by BEREC.

For example, BEREC states 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

“therefore<sup>1</sup> information about regulated roaming services could be provided in the contract summary template.”

Therefore we consider that this should remain a simple recommendation as the contract template has already been developed and utilised by roaming providers and we would suggest to include this safeguard in the guidelines.

Telefónica would also request that the Guidelines include the same wording as the Regulation to avoid misunderstandings. In this case, the guideline should include “shall ensure” and not “must ensure”, according to Article 8 (3).

### Guideline 141

Telefónica considers 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. Depending on the specific implementation, the most efficient procedure could be to handle the complaints separately.

We would suggest 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.**”*

### Guideline 143

Telefónica considers that current commercial practices keep roaming customers adequately informed through the contract information, the web sites, the Welcome messages etc. In our experience, there is no justification to change the frequency of informing the customer, so we would request to keep twelve months as included in the current guidelines (Guideline 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. “*

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<sup>1</sup> Telefónica would suggest to include at this point “**beside other contractual documents**” for the sake of completeness.

### Guideline 145

Telefónica would 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**”.*

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 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.”*

### Guideline 146

See comment as to Guideline 132.

## Financial or volume limit on data roaming consumption

### Guideline 157

We would 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**”*

### Guideline 175

Telefónica would 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 ”~~*

## Inadvertent roaming

### Guideline 177

Telefónica considers that the concept of “potential harm” is not adequate for this context, the Roaming Regulation does not specifically mention it and can be interpreted very broadly. We would suggest 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”.*

## Value-added services (VAS)

### Guidelines 185

Telefónica would request 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 Guidelines 138, 145 and 146) and to implement the transparency measures related to VAS (see also chapter M section a).”*

### Guideline 186

Telefónica would suggest to delete 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

Telefónica considers that the contract is not the appropriate tool to inform the customers about handovers. Besides, this provision is not foreseen in the Regulation.



We would request 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)"*

## Machine-to-Machine communications

### **Guideline 189**

The obligations related to the provision of regulated retail roaming services, RLAH, are described in the relevant sections of the Guidelines. We consider that the reference included in this section, Machine to Machine communications, may be out of context and may lead to misunderstandings.

Therefore we would request 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."*