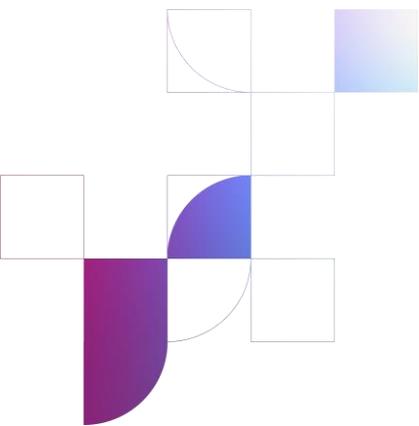


BEREC Opinion on Intra-EU communications regulation

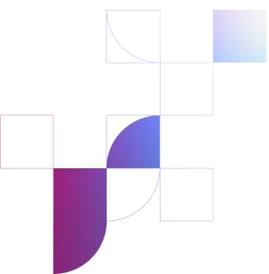


9 March 2023

Contents

Executive summary	3
1. Introduction and objectives of the document	5
1.1. Note on data and methodology	5
2. Overall performance of the intra-EU communications rules in terms of prices/volumes/consumers	6
2.1. Development of number of consumers using regulated intra-EU communication services	7
2.1.1. Mobile services.....	7
2.1.2. Fixed services	10
2.2. Development of intra-EU prices (average revenue per unit) and volumes	11
2.2.1. Mobile voice services	11
2.2.2. Mobile SMS services.....	16
2.2.3. Fixed voice services.....	20
2.3. Differences between mobile and fixed voice communications.....	26
2.4. Summary of views from the call for input	27
2.5. Conclusions about the performance of the intra-EU communications rules in terms of consumers / prices / volumes	27
3. Overall performance of the intra-EU communications rules in terms of derogation procedure	27
3.1. Analysis of derogation procedure	27
3.2. Summary of views from the call for input	28
3.3. Conclusion about the derogation procedure.....	28
4. Alternatives/Substitutes to intra-EU communication services	28
4.1. Analysis of alternatives/substitutes	28
4.2. Summary of views from the call for input	31
4.3. Conclusions about alternatives/substitutes to intra-EU communication services.....	31
5. Comparison between roaming and international communication services	32
5.1. BEREC's analysis.....	32
5.2. Summary of views from the call for input	33
5.3. Conclusions about the comparison between roaming and international communication services	33
6. Relation between retail prices and wholesale costs	33
6.1. BEREC's analysis.....	33
6.2. Summary of views from the call for input	35
6.3. Conclusions about the relation between retail prices and wholesale costs	35
7. Proposals for improvement of the Regulation	35
7.1. Summary from call for input	35
7.2. Opinion of BEREC for areas for amendments and future improvement of the intra-EU communications rules	37
Annex 1 – Summary of the Call for input about the Review of the Intra-EU Communications Regulation	39
a. General comments	39
b. Price caps	42
c. Business users	46
d. Wholesale prices	47
e. Substitutions for intra-EU communications services	48
f. Single Market for telecommunications	49

g. Intra-EU communication surcharges.....	50
h. MVNOs challenges	51
i. Issues with third countries.....	51
j. Recommendations for Intra-EU Communications Regulation	52



Executive summary

In order to support the European Commission's assessment of the effects of the existing measures set out in the BEREC Regulation on intra-EU communications as required by recital 53 of the Roaming Regulation, BEREC has prepared an opinion analysing the measures imposed and drawing on data collected for the Intra-EU¹ Communications Reports.

BEREC's analysis shows that the BEREC Regulation supports the reduction of average revenue per unit for regulated intra-EU communication services for both mobile and fixed services. However, this reduction does not have a significant impact on the regulated volumes consumed or on the number of consumers using these services. In addition, as the percentage of price regulated intra-EU services to total intra-EU services (for consumers only) has remained quite stable over time, it could be concluded that in general the BEREC Regulation does not have a significant impact on the consumption of intra-EU communication services.

According to the feedback from NRAs, no derogation applications have been received because there is a margin between the cost of provision of the services and the retail price caps. However, this could change if the price caps are reduced, especially in the case for SMS services which do not have regulated termination rates. Therefore, BEREC concludes that a simplification of the derogation mechanism could be examined.

As regards the availability of substitutes in particular from a financial perspective, it appears that end-users show steadily increasing preference for free of charge NI-ICS that are suitable to substitute intra-EU communication by means of voice and SMS. However, while the overall use of traditional voice and SMS communication services is declining, they still remain popular among those aged 55 or above. One reason, why consumers do not yet fully make use of appropriate NI-ICS as a substitute for intra-EU communications may be the interoperability of service providers. This issue is being addressed for some service providers in the Digital Markets Act (DMA), which includes interoperability obligations for gatekeepers providing NI-ICS.

In addition, although the main difference between roaming and international communications is the network where the call or SMS is being initiated, the interplay between these current legal frameworks for roaming and for intra-EU communications leads to a situation which may confuse consumers. While roaming within the EU/EEA, consumers can make calls and send SMS to any EEA country at domestic rates with no extra cost. However, once returning to their home country, consumers pay more, usually the maximum price cap per minute for an intra-EU call or SMS. Therefore, the difference in pricing between intra-EU services and roaming services offered under RLAH regime should be made clearer, for example through accompanying communication campaigns.

From a cost perspective, according to the available data, the current price caps are significantly higher than a rough estimate of the costs required to offer intra-EU calls. However, for the case of SMS, due to the lack of complete information about SMS termination rates,

¹ The Regulation applies to the EEA. Therefore, although the term intra-EU is used in the document (using the terminology of the legislation), it includes intra-EEA communication services

such an analysis could not be provided. Furthermore, some operators raised the issue of high transit prices, which according to their feedback are in some cases higher than the retail price cap for intra-EU calls, posing a particular challenge for small providers. BEREC has identified this as an issue in the context of other cases (e.g. calls to Ukraine, for which there is some voluntary decrease of retail prices on behalf of some operators). The European Commission might need to investigate this topic further, as it seems to affect especially smaller operators to a greater extent.

Furthermore, BEREC agrees that the drafting of Article 5a (4) needs to be adapted according to the suggestions received in the BEREC call for input. BEREC also agrees that the rules for switching between tariffs of the Roaming Regulation is more fit for purpose than the ones of BEREC Regulation for intra-EU communications.



1. Introduction and objectives of the document

Regulation (EU) 2015/2120 (TSM Regulation) as amended by Regulation (EU) 2018/1971 (BEREC Regulation) sets price caps for intra-EU communications, as well as laying down rules for the switching of tariffs and a derogation mechanism. In addition, the BEREC Regulation elaborates in recitals 43-52 the challenges identified in regards to intra-EU communications. These mainly relate to significantly higher charges for intra-EU communication compared to domestic communication, which may however have a reduced impact on consumers due to the availability of packages offered as add-ons by providers, as well as number-independent interpersonal communications services. The Regulation entered into force on 15 May 2019.

According to recital 53 of Regulation (EU) 2022/612 (hereinafter “Roaming Regulation”), the European Commission, with the support of BEREC, should assess the effects of the existing measures introduced by the BEREC Regulation on intra-EU communications and determine whether, and to what extent there is an ongoing need to reduce the caps in order to protect consumers.

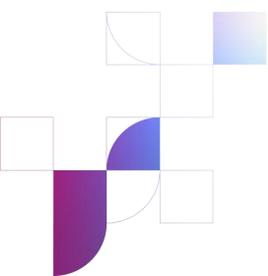
For this purpose, BEREC prepared an opinion analysing the measures imposed, mainly based on the data collected for the Intra-EU Communications Benchmark Reports. In order to complement the overview of the functioning of the Intra-EU communications rules, BEREC published a call for input and requested stakeholders to provide suggestions for improvements/changes, taking also into account the requirements of the Roaming Regulation laid down in recital 53. A short summary of the inputs of stakeholders has been added to the relevant paragraphs. A full summary of the received inputs of stakeholders is added in the Annex of this document.

1.1. Note on data and methodology

BEREC started to collect data for intra-EU calls before the relevant provisions of the BEREC Regulation entered into force (first period October 2018 – 31 March 2019). However, the data for this period is not complete and there are some uncertainties about this. Therefore, the figures showing the development of *volumes* for different services do not contain information from the period before the Regulation came into force.

BEREC notes that due to issues arising during the data collection, discrepancies in the figures might be observed, in particular regarding the price caps. This could happen due to the following reasons:

- First, some operators needed to perform system upgrades to comply with the new format of the data collection and therefore could not provide the data directly from their systems. Those operators were asked to provide the best possible estimate available at the time and to complete upgrades in time to provide high quality data for the next data collections.



- Second, some NRAs expressed major data quality challenges by the telecommunications providers at national level as well as the use of different reporting systems by operators. This required the respective NRA to make slight adaptations and estimates to provide revenues/volumes.
- Third, average revenues per unit discrepancies might be observed due to different volumes of actual and billed minutes. BEREC's questionnaire asks operators to provide actual minutes while the revenues are naturally formed from the billed minutes. As the first charging interval is more than 1 second (the most applied is 60 second interval), the billed minutes are more than the actual minutes.
- Fourth, the Euro is used as the reporting currency throughout this Report. Within the EEA, currency fluctuations between the Euro and other national currencies are likely to have affected the average revenues per unit reported for EEA countries outside the Euro zone.

Note also that all retail prices included in the charts exclude VAT. They also represent an average of prices paid by post-paid and prepaid tariff plan customers.

In addition, it is noted that the term 'average revenue per unit' is used instead of the term 'price' because the data available to BEREC allows this calculation and not the price estimation. However, the changes on average revenue per unit are linked to the changes on prices.

The following terminology is used in the figures:

- **Price regulated intra-EU communications:** Number-based interpersonal communications services (calls or SMS) originating in the Member State of the consumer's domestic provider and terminating at any fixed or mobile number of the national numbering plan of another Member State, and which is charged wholly or partly based on actual consumption (metered tariffs, not bundles). Business customers are not covered by the BEREC Regulation.
- **Alternative tariffs:** Tariffs for international communications that can be offered in addition to the regulated tariffs. Alternative tariffs may cover non-EU countries and intra-EU communications, however only the intra-EU communication component is included in the figures. Alternative tariffs refer to services which are 'charged wholly or partially based on actual consumption'.
- **Total intra-EU communication:** Covers both consumers and business subscribers and any type of tariff (consumption based/metered, bundle etc.).

2. Overall performance of the intra-EU communications rules in terms of prices/volumes/consumers

The objectives of the regulation are stated in Article 50 (2) BEREC Regulation:



“...ensure that consumers are not charged excessive prices for making number-based interpersonal communications originating in the Member State of the consumer’s domestic provider and terminating at any fixed or mobile number in another Member State.”

Recital 43 BEREC Regulation describes the situation and its effect on consumers:

“significant price differences continue to prevail, for both fixed and mobile communications, between domestic voice and SMS communications and those terminating in another Member State in a context of substantial variations of prices between countries, providers and tariff packages, and between mobile and fixed voice communications. [...] On average, the standard price of a fixed or mobile intra-EU call tends to be three times higher than the standard price of a domestic call and the standard price of an intra-EU SMS message more than twice as expensive as a domestic one. However, those arithmetic averages hide significant differences across Member States. In some cases, the standard price of an intra-EU call can be up to eight times higher than the standard price for domestic calls.”

Recital 44 BEREC Regulation sets out the internal market objective of the regulation:

“Moreover, high prices for intra-EU communications represent a barrier to the functioning of the internal market as they discourage seeking and purchasing goods and services from a provider located in another Member State. It is hence necessary to set specific and proportionate limits to the price that providers of publicly available number-based interpersonal communications services may charge consumers for intra-EU communications in order to eliminate such high prices.”

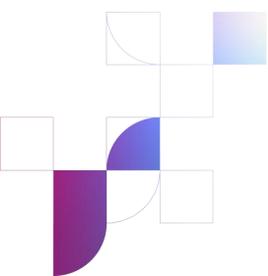
On the basis of the available data, BEREC examined the following aspects of intra-EU communications:

- Development of the number of consumers using price-regulated intra-EU communications - fixed and mobile
- Development of prices of price-regulated intra-EU communications – fixed and mobile
- Development of volumes of price-regulated intra-EU communications – fixed and mobile (impact of COVID-19 pandemic also discussed)

2.1. Development of number of consumers using regulated intra-EU communication services

2.1.1. Mobile services

Analysing the number of mobile subscribers for EU as a whole and individual countries, it is possible to observe highly heterogeneous situations at the national level.



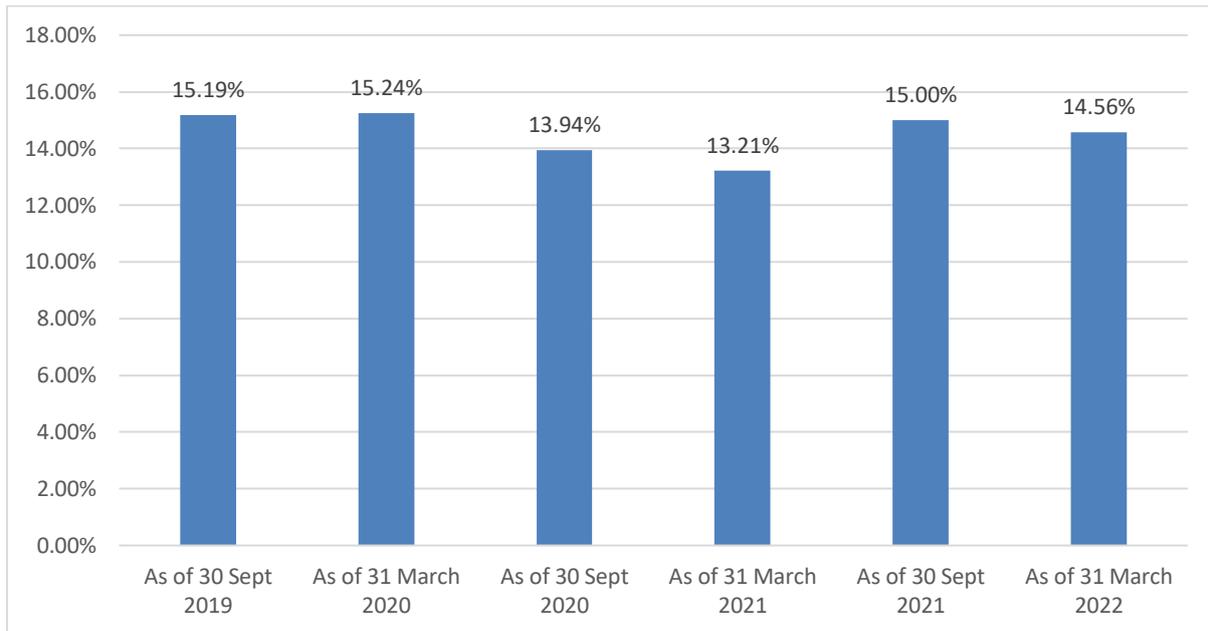


Figure 1 EEA average: percentage of mobile subscribers (consumers only) that used intra-EU communications at regulated prices from (vs) total number of active subscribers (consumers and businesses), as of 30 September 2019 - 31 March 2022.

Figure 1 shows the number of consumers that used intra-EU communications as a share of the total number of subscribers (consumers and business). The first pillar of the figure covers the period 31 March 2019 to 30 September 2019, i.e. the first two quarters when the regulation of intra-EU communication services entered into force. It appears from the figure 1 that the percentage of mobile subscribers using intra-EU communications at regulated prices has been relative stable since the regulation entered into force. Figure 2, however, shows some differences between the countries regarding the share of subscribers using regulated intra-EU communications.

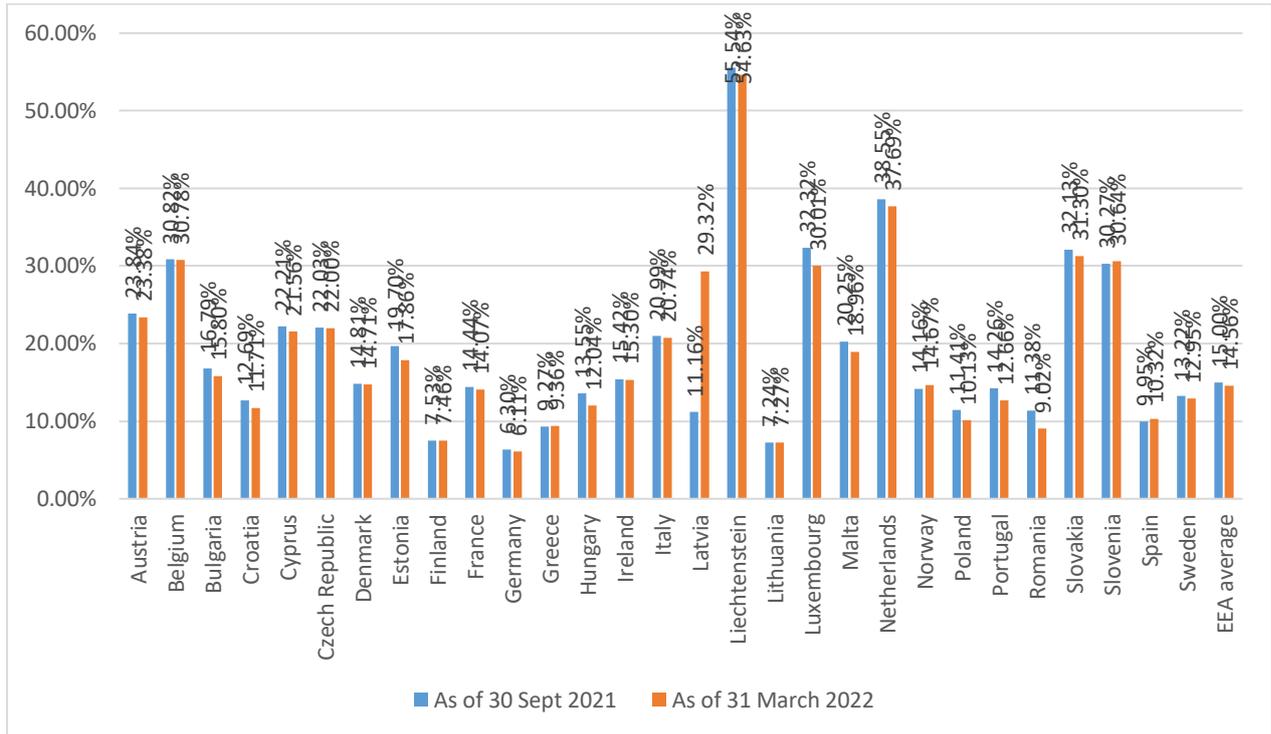


Figure 2 Percentage of mobile subscribers (consumers only) that used intra-EU communications with regulated price from (vs) total number of active subscribers (consumers and businesses), as of 30 September 2021 and 31 March 2022. Source: BEREC Intra-EU communications Report.

Summing up, one could say that the percentage of mobile subscribers using intra-EU communications with regulated prices has been relative stable since the relevant provisions of the BEREC Regulation entered into force.

2.1.2. Fixed services

Analysing the numbers for fixed subscribers for both EEA as a whole and individual countries, provides a similarly heterogeneous picture at the national level as for mobile subscribers.

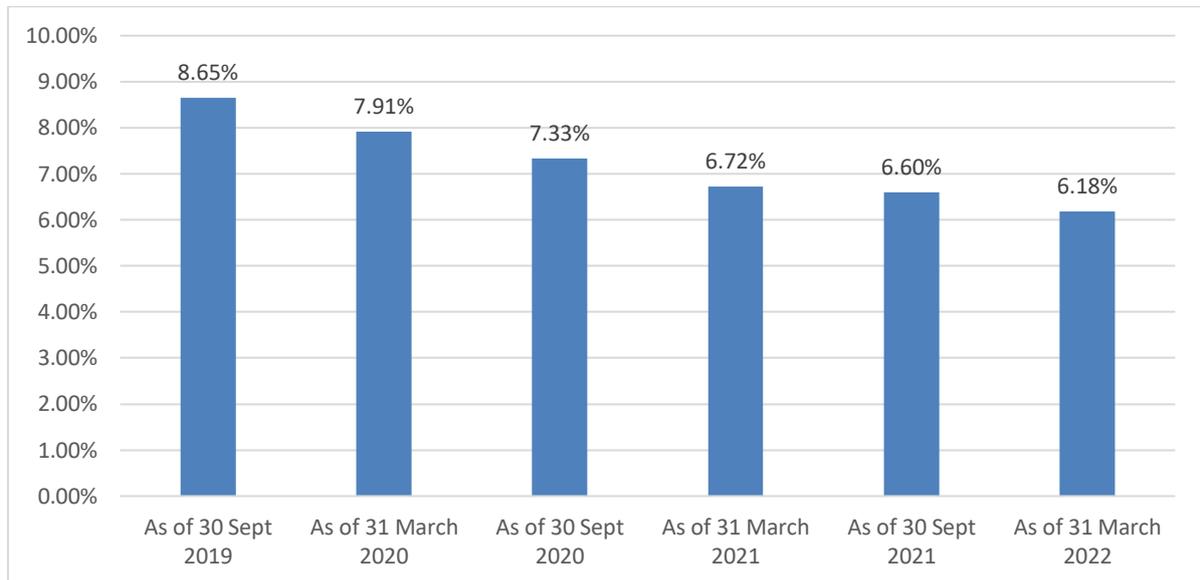


Figure 3 EEA average: Percentage of fixed subscribers (consumers only) that used intra-EU communications at regulated price from (vs) total number of active subscribers (consumers and businesses).

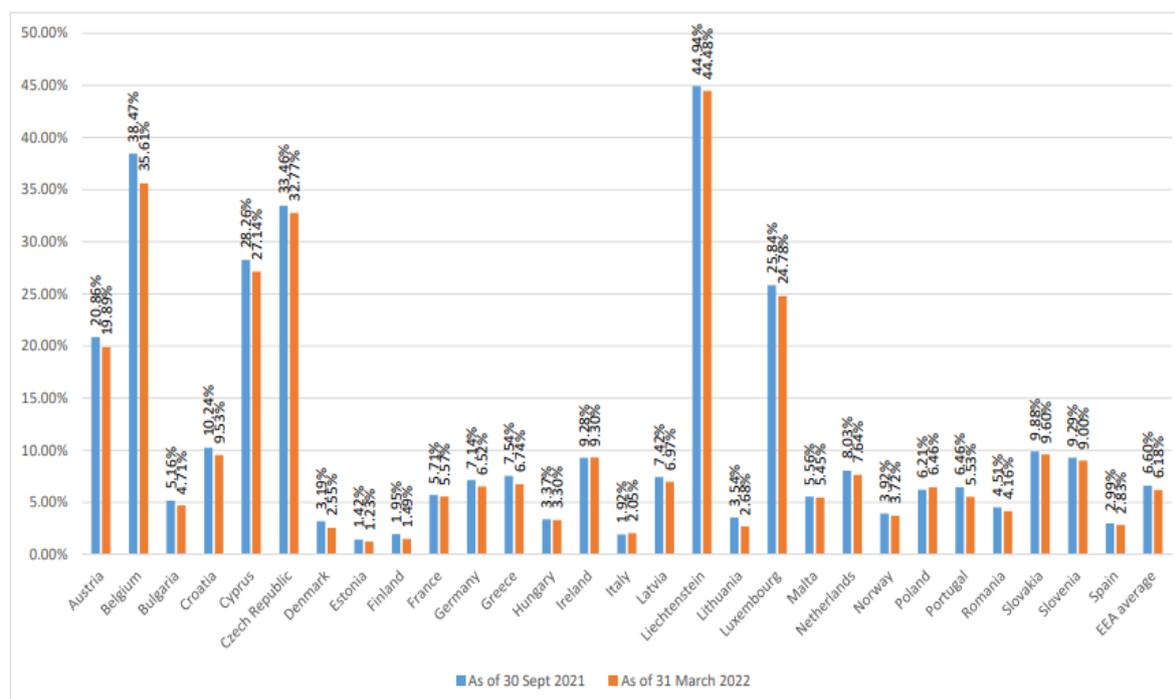


Figure 4 Percentage of fixed subscribers that used intra-EU communications at regulated price (consumers only) from the total number of active subscribers (consumers and businesses), as of 30 September 2021 and as of 31 March 2022. Source: BEREC Intra-EU communications Report.

It is clear from these figures that the introduction of the regulation has not led to more consumers with fixed subscriptions using intra-EU communications at a regulated price.

Summing up, one could say that the EEA average percentage of fixed subscribers that used intra-EU communications at regulated prices from the total number of active subscribers has decreased over time. The variation between countries, however, is high.

2.2. Development of intra-EU prices (average revenue per unit) and volumes

2.2.1. Mobile voice services

BEREC collected information on revenue per minute from each Member State. The figures below show the development of average revenues which gives an indication of how prices for regulated mobile intra-EU calls (voice minutes) have developed.

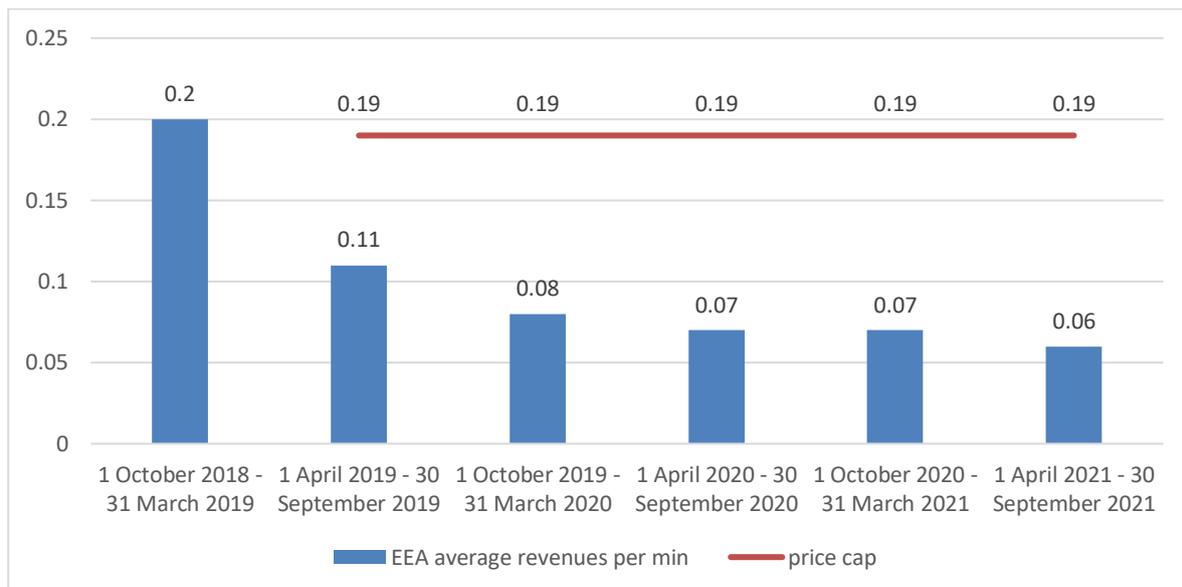


Figure 5 Evolution of EEA average revenues (in EUR) per mobile minute for price regulated intra-EU calls, 1 October 2018 - 31 March 2022.

Figure 5 shows that average prices were slightly higher (0.20 EUR) than the cap, before the regulation entered into force. Looking closer at the numbers in the figure, it is noted that there was a significant decrease in the average revenue across EEA from the fourth quarter of 2018 (including first quarter of 2019), and to the second and third quarter of 2019. The following quarters have also seen a solid decrease from 0.11 EUR to 0.06 EUR, but it has not been that steep. All in all, the numbers suggest that average revenues have been reduced by about 2/3 since the Intra-EU regulation entered into force in May 2019, compared to the previous (roughly) six months. It is also obvious that average revenues are – with a large margin – well below the cap (0.19 EUR).

Studying the average revenues per minute in the different countries, it is noted that even after the introduction of the Regulation, there are quite some differences between the countries. Some are very close to the cap or at the cap,² while others are significantly below.

² Average revenue per unit discrepancies might be observed due to different volumes of actual and billed minutes. The questionnaire asks operators to provide actual minutes while the revenues are naturally formed from the billed minutes. As the first charging interval is more than 1 second (the most applied is 60 s. interval), the billed minutes are more than the actual minutes. This is the reason why the calculated average price might be above the price cap (operators apply the maximum retail price for Intra-EEA calls made – 0.19 EUR per min).

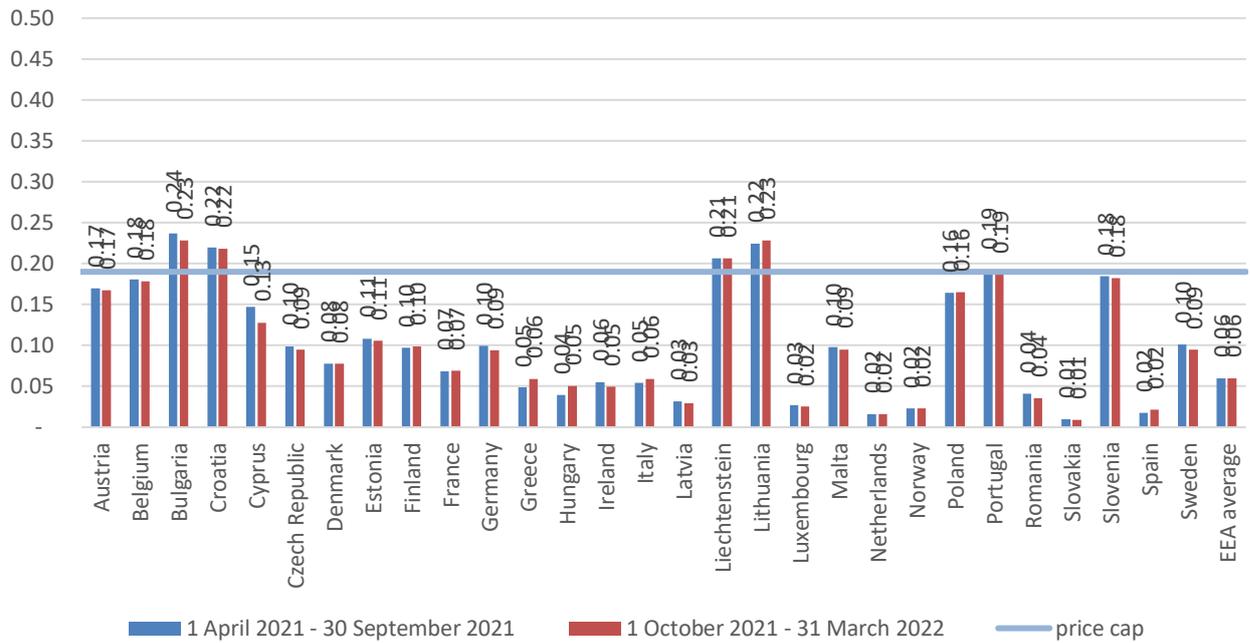


Figure 6 Revenues (in EUR) per mobile minute for price regulated intra-EU calls, 1 April 2021 – 30 September 2021 and 1 October 2021 – 31 March 2022.

The volume and the use of Intra-EU communications might also give an indication of the effects of the regulation on consumers and their behaviour.

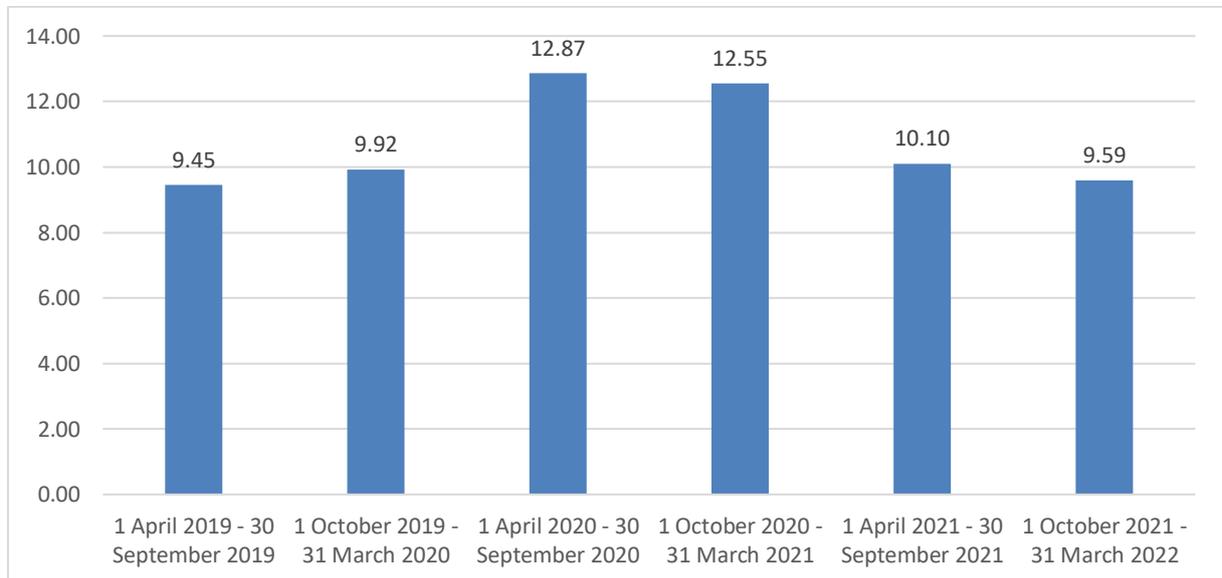


Figure 7 EEA average number of mobile intra-EU minutes per month per consumer (consumers that used intra-EU communications services, both regulated and from alternative tariffs), 1 April 2019 - 31 March 2022.

Looking at the average number of minutes per month per consumer, as visible in Figure 7, the data from April 2019 until March 2022 shows a somewhat different trend than the development

of the revenues per unit. Although the volumes as such are relatively small, there are signs of a steady increase towards the middle of the observed period, followed by what seems like a slight decline towards the first quarters of 2022. Given that the average number of minutes peaked around the second quarter of 2020, it can be assumed that this relates to the outbreak of the COVID-19 pandemic. It is, however, also clear that the average usage has levelled out at a higher level compared to the start of the time period³.

The figure below compares the development in total minutes of intra-EU mobile calls (business and consumers) with the development of regulated minutes and alternative tariffs.

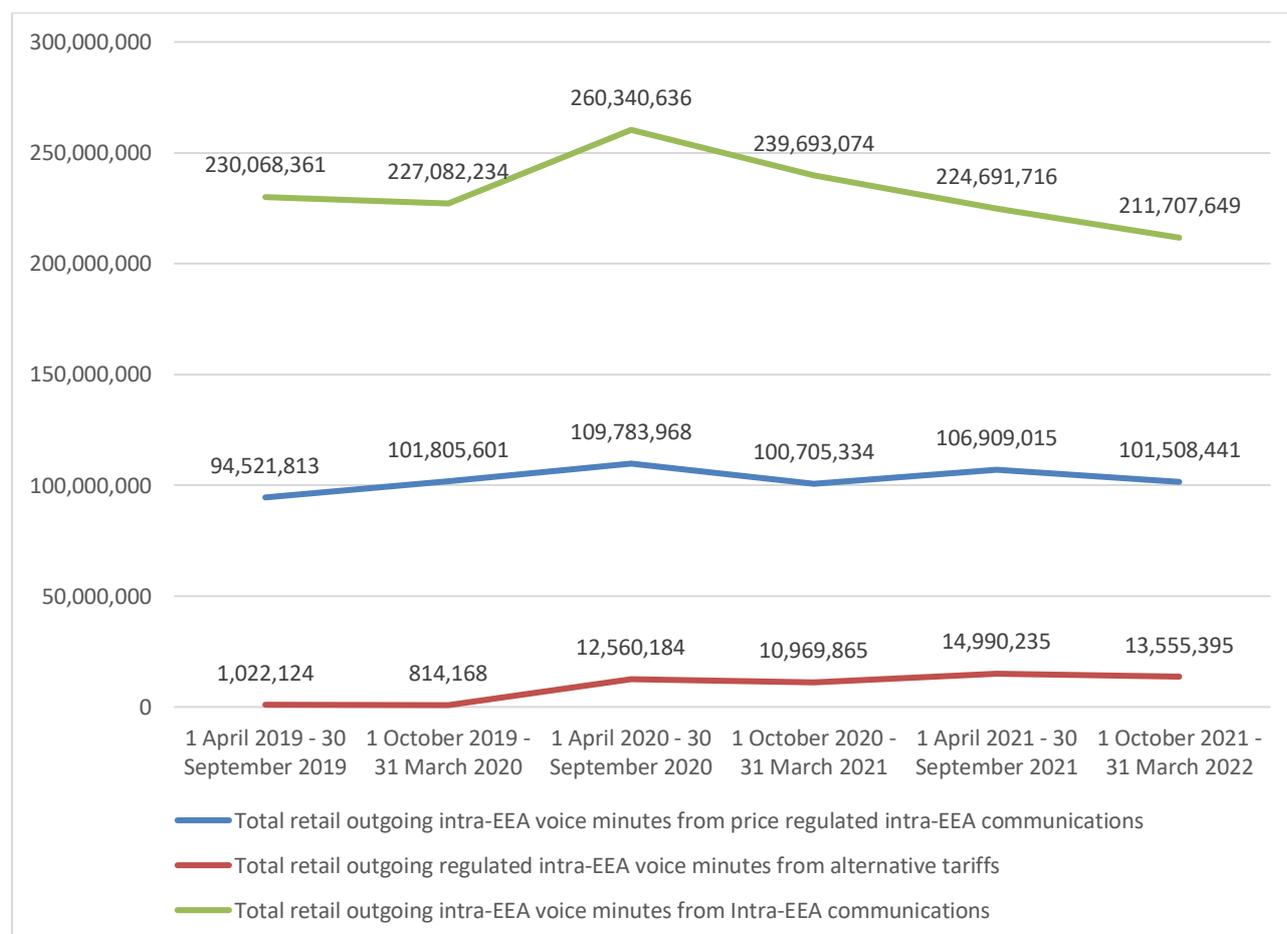


Figure 8 Development in total minutes for price regulated intra-EU mobile calls and alternative tariffs (consumers only) as well as total minutes of intra-EU communications (consumers and businesses).

From the graphs, it seems clear that alternative tariffs play a limited role when it comes to the total volume of intra-EU calls performed by mobile subscribers. Again, there is a peak in the numbers that probably coincides with the start of the COVID-19 pandemic. The total number

³ According to the graph above about subscribers, during the same period, the number of subscribers using these services declined, which could indicate for instance that cross-border workers with home office possibilities made more use of intra-EEA communications through their private subscriptions.

of outgoing retail voice minutes has since declined while the regulated share of the volume has remained more constant.

The figure below excludes business customers while looking at the share of minutes that is covered by the regulation.

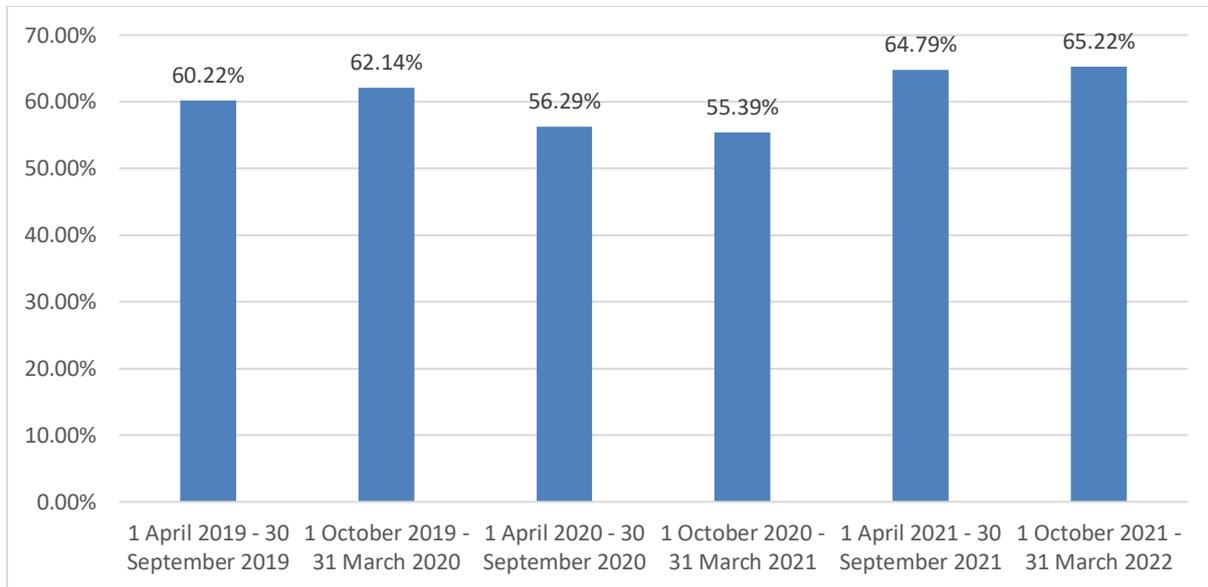


Figure 9 EEA average: percentage of price regulated intra-EU mobile call minutes (vs) total intra-EU mobile minutes (for consumers only), 1 October 2018 – 31 March 2022.

On average, about 55-65% of all minutes generated by mobile consumers were covered by the regulated price. This means that about 35-45% of intra-EU calls generated by consumers with mobile subscriptions are not covered by the scope of the price cap (this could be for example volumes from bundles).

Looking at the latest numbers from different Member States, it is clear that there are significant variations.

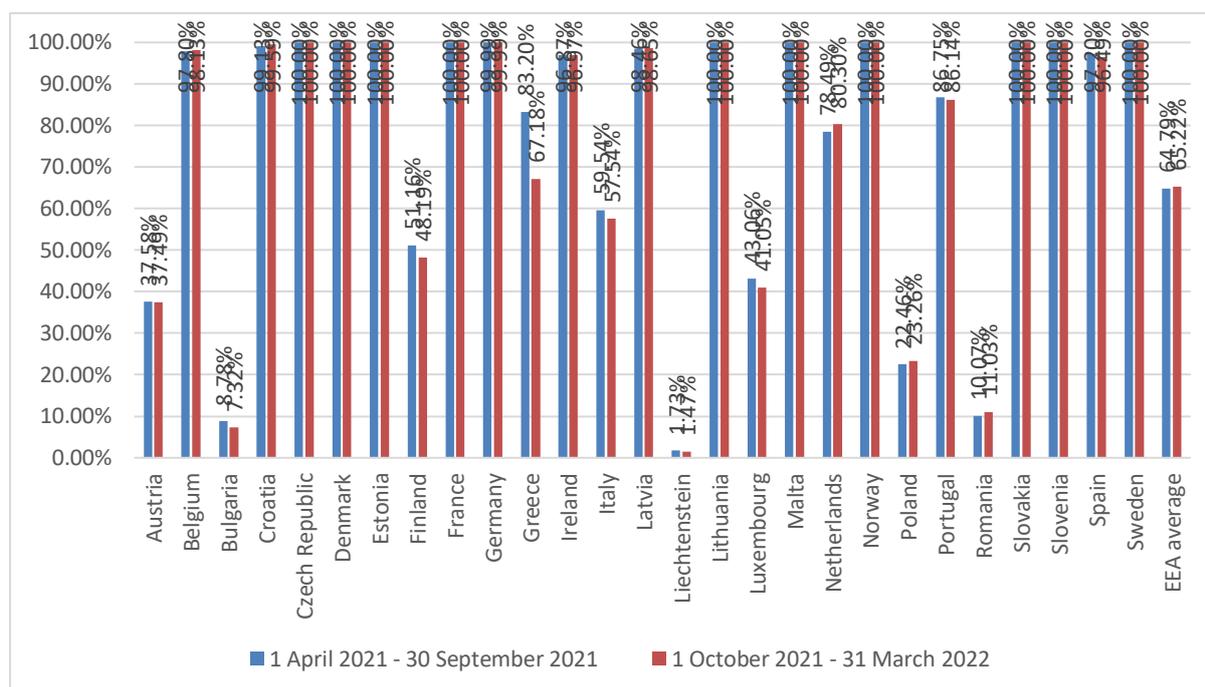


Figure 10 Percentage of price regulated intra-EU mobile call minutes (vs) total intra-EU minutes (for consumers only), 1 April 2021 – 30 September 2021 and 1 October 2021 – 31 March 2022.

For consumers in Member States where all of the intra-EU traffic is more or less included in the regulated volumes, the caps are likely to play an important role. On the other hand, in Member States where intra-EU traffic constitutes a smaller part of the total volume, one must assume that usage of dedicated bundles and/or alternative tariffs plays a larger role for the consumers.

In total, this indicates that the regulation, and the subsequent decline in average prices, has had a positive effect for mobile consumers: Their average payment for making mobile intra-EU calls has decreased and there has been a slight increase in usage.

However, there are still large variations between countries regarding the average prices and the degree of intra-EU mobile voice calls being covered by the regulation.

2.2.2. Mobile SMS services

BEREC has collected information on revenue per SMS from each Member State. The figures below show the development of average revenues per SMS, which gives an indication of how prices for regulated intra-EU SMS have developed.

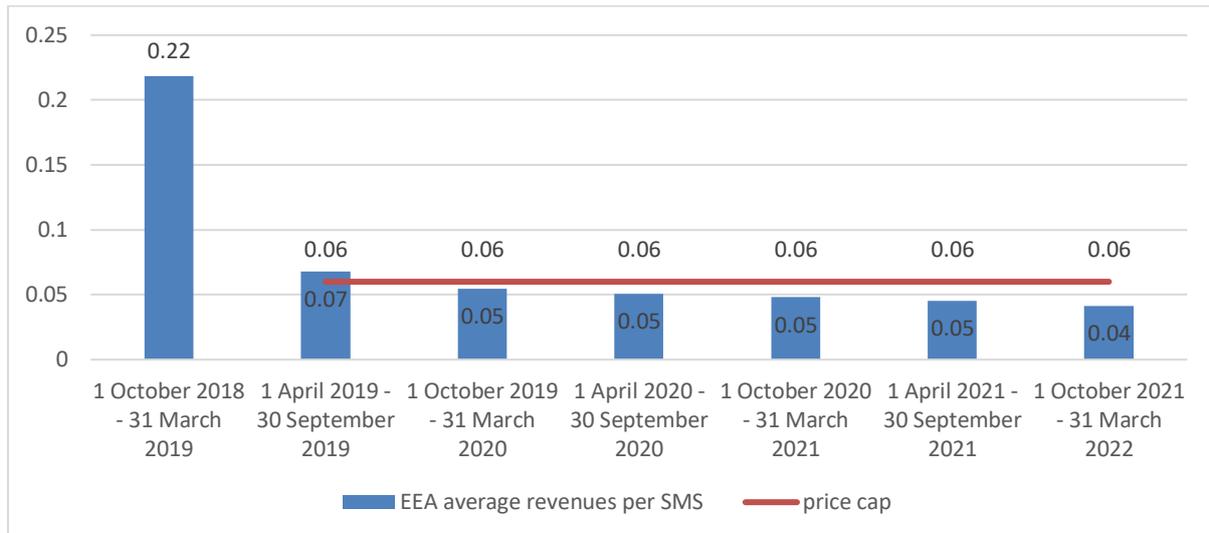


Figure 11 Evolution of EEA average revenues (in EUR) per SMS for price regulated intra-EU SMS⁴.

As for mobile SMS services, the EEA average revenue per SMS for price regulated intra-EU SMS resulted in a substantial decrease from when the regulation entered into force in May 2019. The EEA average revenue was reduced by about 68% and has reduced further in the following quarters. While investigating the most recent prices in different countries, it is noted that even after quite some time has passed since the introduction of the regulation, there are fairly large differences between the countries. In several countries, the revenues are at or very close to the cap; in fact, some even above the cap, while others are well below.

⁴ Due to rounding the relevant value appears to be the same, although there is some difference in the height of the pillars

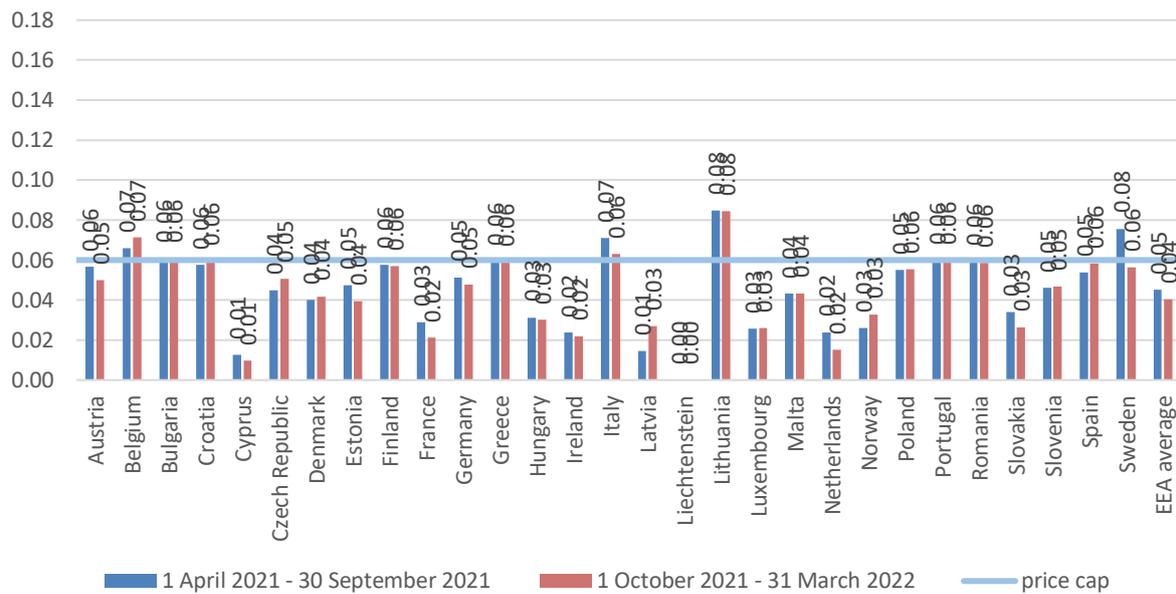


Figure 12 Revenues per SMS for price regulated intra-EU SMS, 1 April 2021 – 30 September 2021 and 1 October 2021 – 31 March 2022⁵.

When taking into consideration only those consumers who actually used intra-EU communication services during the time period in question, another trend being observed is a decline in the usage of SMS as a tool to convey messages between EEA countries.

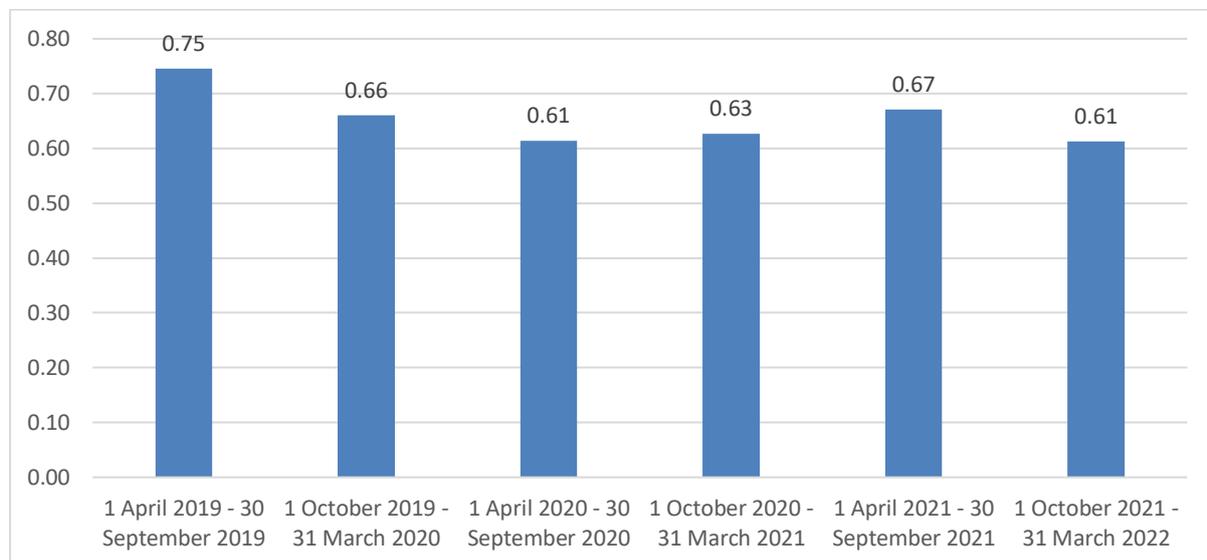


Figure 13 EEA average number of intra-EU SMS per month per consumer (consumers that used intra-EU communications services), 1 April 2019 - 31 March 2022.

⁵ Due to rounding the relevant value appears to be the same, although there is some difference in the height of the pillars

The actual usage looks to have levelled out at around 0.6 SMS per consumer. The low level of intra-EU SMS reflects a general declining trend in SMS usage and may be connected to the usage of other messaging services, see chapter 4.1. The figure below compares the development in total volume of intra-EU SMS (businesses and consumers) with the development of price regulated SMS and SMS from alternative tariffs (consumers only).

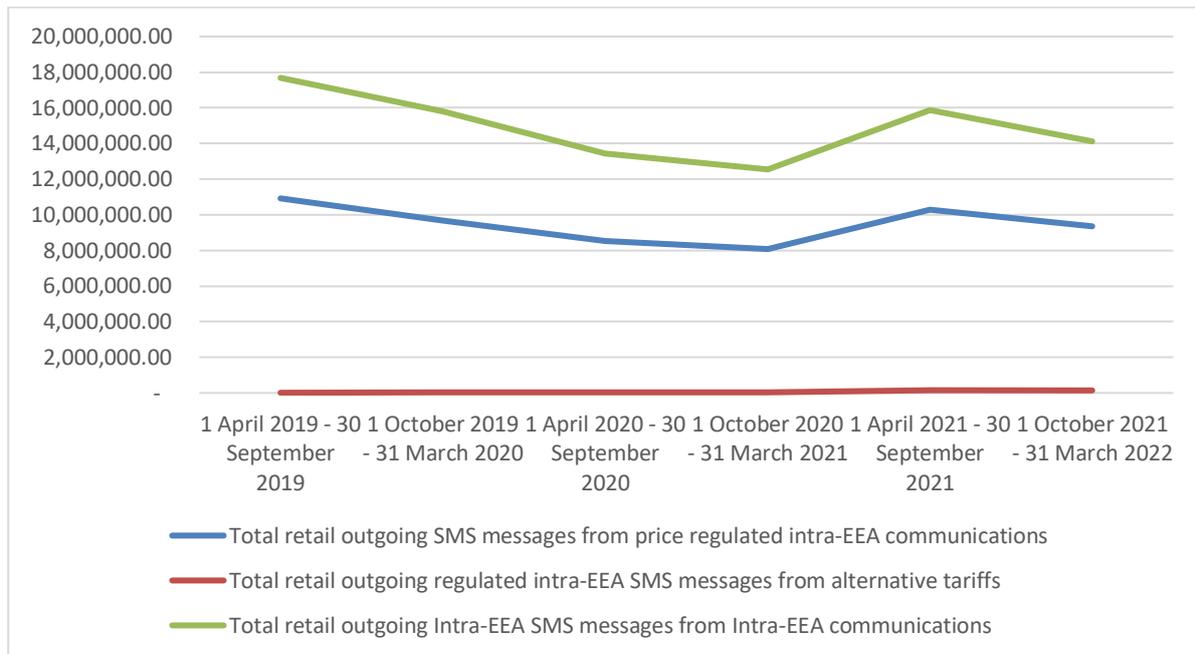


Figure 14 Development of total outgoing regulated intra-EU SMS and total SMS from alternative tariffs (consumers only) as well as total outgoing intra-EU SMS (businesses and consumers).

At an even larger degree than for outgoing voice minutes of intra-EU calls, alternative tariffs play a lesser role for the total consumption volume of intra-EU SMS.

The figure below excludes business customers while looking at the share of intra-EU SMS that is covered by the regulation.

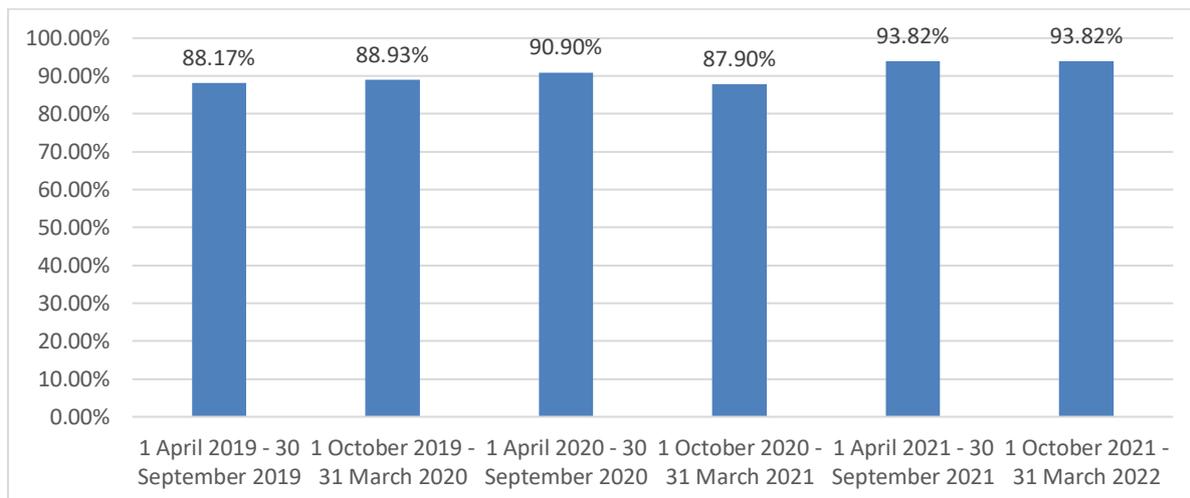


Figure 15 EEA average: percentage of price regulated intra-EU communications (vs) total originated intra-EU SMS (consumers only), 1 October 2018 – 31 March 2022.

Looking at the values in Figure 15, it seems that on average more than 90% of all intra-EU SMS were covered by the regulated price. This means that less than 10% of intra-EU SMS were consumed outside the regulated price, i.e. they are part of a bundle or an alternative tariff.

In conclusion, the total number of intra-EU SMS is rather low and the numbers indicate that the introduction of the Regulation had minor effects. Prices have been reduced but usage does not seem to be strongly connected to this effect.

2.2.3. Fixed voice services

The figures below show the development in average revenues per minute, which gives an indication of how prices for regulated intra-EU fixed calls have developed.



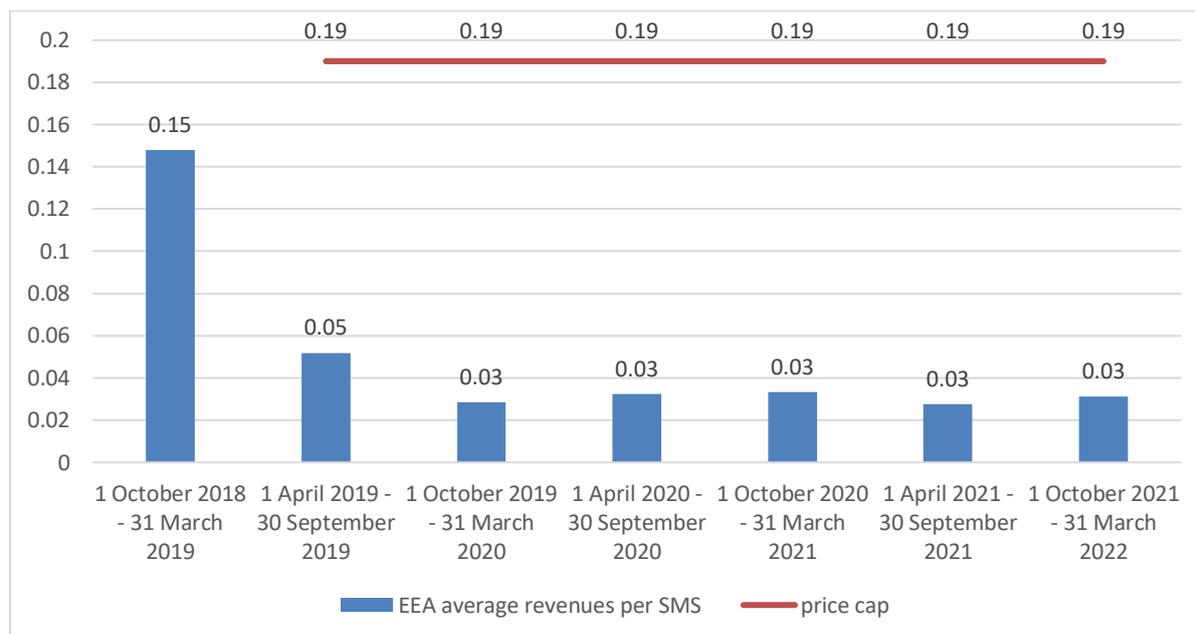


Figure 16 Evolution of EEA average revenues (in EUR) per fixed call minute for price regulated intra-EU calls, 1 October 2018 - 31 March 2022⁶.

The figure shows that there was a significant decrease in average revenue per minute for fixed intra-EU calls in the six-month period starting from April 2019. This indicates that the implementation of the TSM Regulation as amended by the BEREC Regulation in May 2019 had a positive effect on prices for fixed intra-EU calls.

The numbers according to the figure suggest that average revenue per minute have been reduced by more than two thirds since the regulation entered into force, compared to the previous (roughly) six months when no relevant provisions were in place.

The figure also shows that the average revenues were below the cap that was introduced (0.19 EUR) prior to the regulation's entry into force. Currently the average revenue seems to be well below caps.

The significant variation in prices among countries was one of the drivers leading to the introduction of the regulation. The latest BEREC Report on Intra EU communications⁷ shows that this is still the case. In some countries, the average revenue per minute is more or less at the cap of 0.19 EUR while a third of the countries shows revenues less than 0.05 EUR per minute.

⁶ Due to rounding the relevant value appears to be the same, although there is some difference in the height of the pillars

⁷ <https://www.berec.europa.eu/en/document-categories/berec/reports/intra-eu-communications-berec-benchmark-report-april-2021-march-2022>

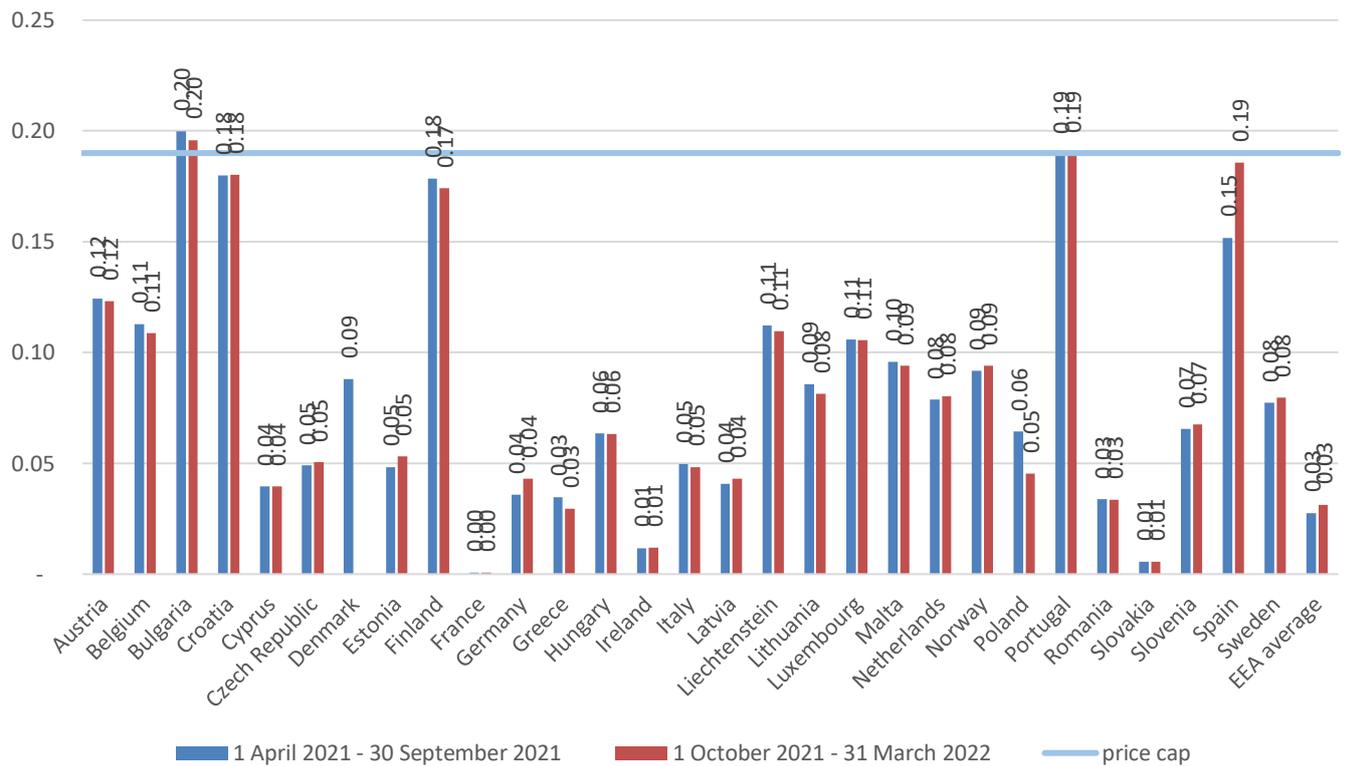


Figure 17 Revenues (in EUR) per fixed minute for price regulated intra-EU calls, 1 April 2021 – 30 September 2021 and 1 October 2021 – 31 March 2022⁸.

The volume and use of intra-EU communications might also give an indication of the effects of the regulation for consumers and their behaviour. The figure below shows the development in number of fixed intra-EU minutes per month per consumer.

⁸ Due to rounding the relevant value appears to be the same, although there is some difference in the height of the pillars

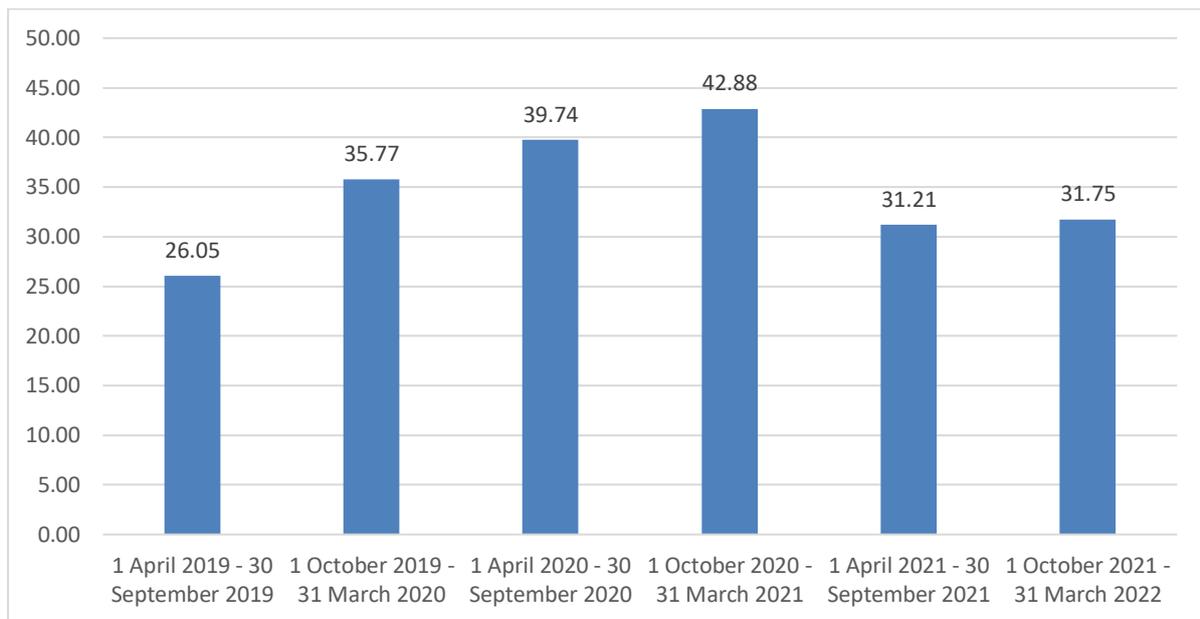


Figure 18 EEA average number of fixed intra-EU call minutes per month per consumer (consumers that used intra-EU communications services, both regulated and from alternative tariffs), 1 April 2019 - 31 March 2022.

The average number of minutes per month per consumer increased after the introduction of the regulation and until 31 March 2021. However, there was a quite significant decline in the number of minutes from 1 April 2021. It can be assumed that for fixed intra-EU calls, the peak in number of minutes relate to the outbreak of the COVID-19 pandemic, where traveling was substituted by calls. The average number of minutes seems to have levelled out at around 31 minutes per month per subscriber, which is slightly higher than the results of the first period when the regulation entered into force.

The figure below compares the development in total minutes of intra-EU fixed calls (businesses and consumers) with the development of regulated minutes and alternative tariffs.

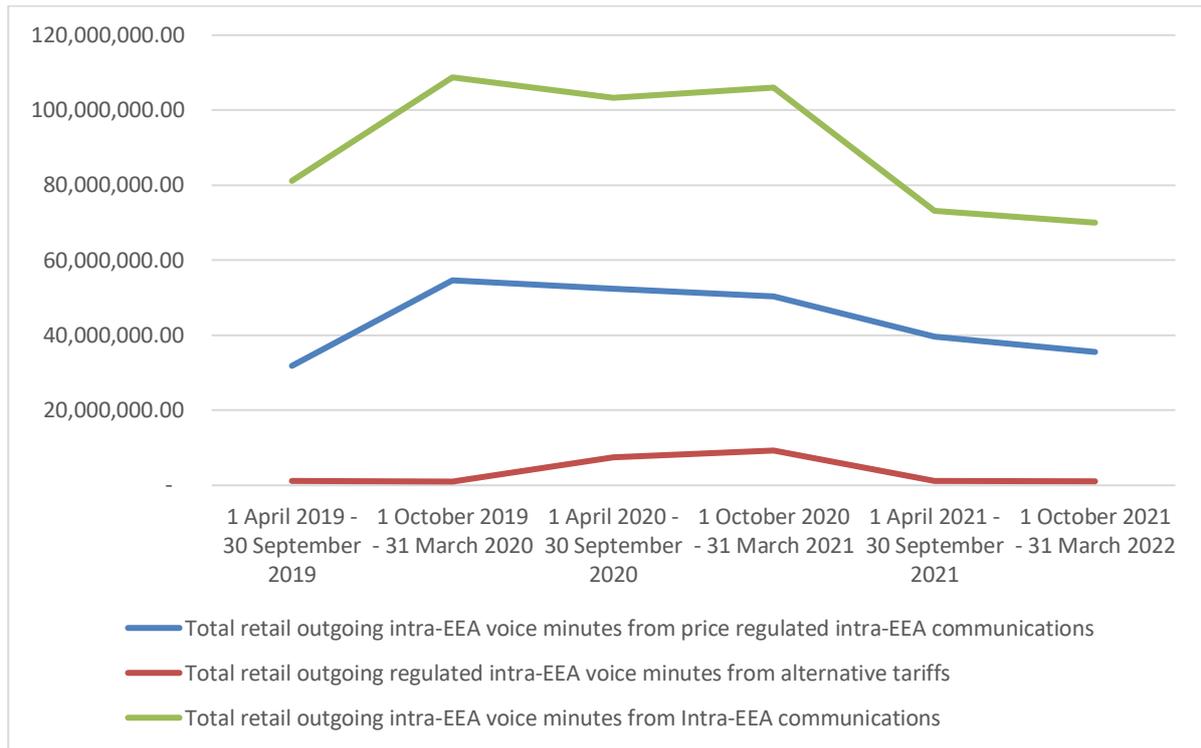


Figure 19 Development in total minutes for price regulated intra-EU fixed calls and alternative tariffs (consumers only) and total minutes of fixed intra-EU communications (businesses and consumers).

The number of voice minutes under alternative tariffs had a certain increase in 2020, however, the volumes have once again dropped to very low levels. Compared to the development in the overall volume, price regulated tariffs seem to have held their ground somewhat better although there is a declining trend.

The figure below looks at the share of minutes from fixed voice services that is covered by the regulation and excludes business customers.

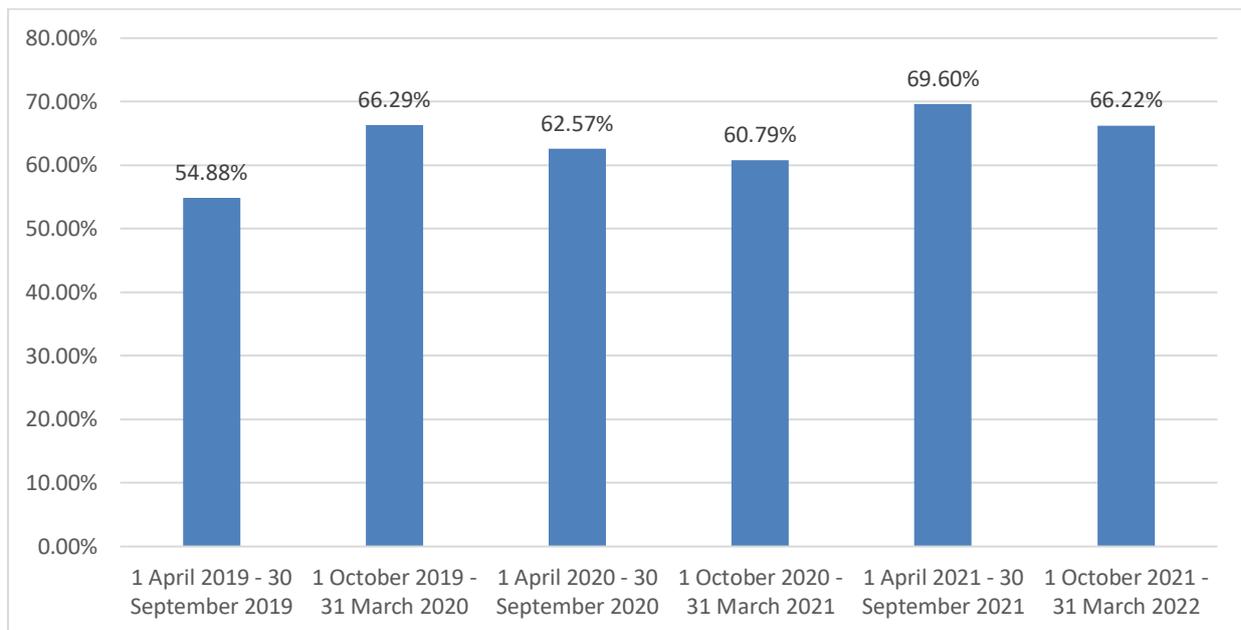


Figure 20 EEA average: percentage of price regulated intra-EU fixed call minutes (vs) total intra-EU fixed minutes (for consumers only), 1 October 2018 – 31 March 2022.

On average, around 60-70% of all minutes generated by fixed telephony consumers were covered by the regulated price. Still, around 30-40% of fixed intra-EU minutes generated by consumers were not regulated (offered for example as bundles).

Looking at the latest numbers from different Member States, it is clear that there are significant variations.

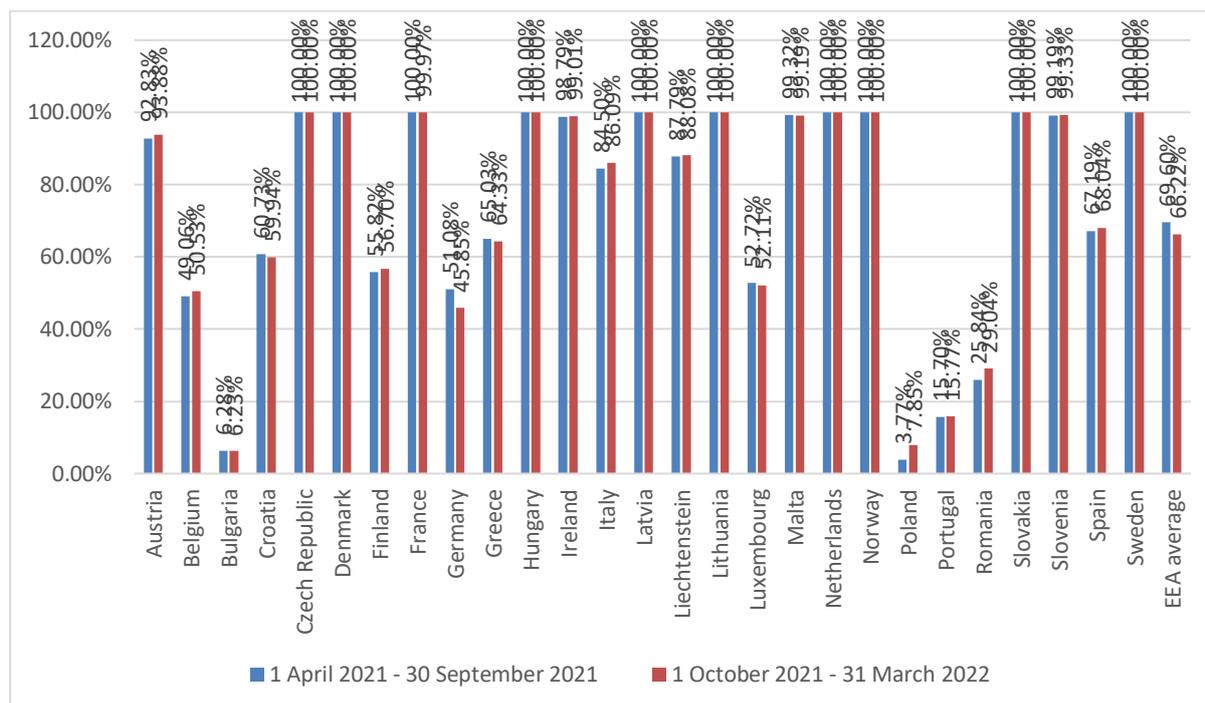


Figure 21 Percentage of price regulated intra-EU fixed call minutes (vs) total intra-EU fixed minutes (for consumers only), 1 April 2021 – 30 September 2021 and 1 October 2021 – 31 March 2022.

In Member States where all of the fixed intra-EU traffic is more or less included in the price regulated volumes, the caps are likely to play an important role. On the other hand, in Member States where lesser part of the regulated fixed intra-EU traffic constitutes the total volume, one must assume that usage of dedicated bundles and/or alternative tariffs plays a more important role for the consumers.

To sum up, on average consumers have reduced their payments for fixed intra-EU calls, while the variation between countries is still significant and the effect on volumes is limited. Around one third of fixed intra-EU calls originated by consumers were not price regulated.

2.3. Differences between mobile and fixed voice communications

Before the regulation entered into force, the average revenue per minute for calls that are charged wholly or partly based on actual consumption was 0.20 EUR for mobile calls and 0.15 EUR for fixed calls. This means a difference of 0.05 EUR (25%). The latest BEREC figures for intra-EU calls showed a decrease to 0.06 EUR for mobile calls, while the revenue per minute for fixed calls was 0.04 EUR – a difference of 0.02 EUR (33%). The absolute difference between mobile and fixed calls has definitely decreased after the regulation was introduced.

2.4. Summary of views from the call for input

There seems to be different views on what should be the future for the intra-EU communications regulation.

On the one hand, respondents representing individuals and consumer organisations (BEUC) advocate that retail surcharges for intra-EU communications should be removed, i.e. the price level for making intra-EU calls and intra-EU SMS should not differ from the domestic prices. They present arguments that this is the way forward to secure a true Single Market, and that safeguards could also be introduced to prevent abuse and give providers the chance to charge relevant direct costs.

On the other hand, operators and/or groups of operators (e.g. GSMA) are of the view that the regulation should be lifted and not continued after May 2024. They argue that the data gathered by BEREC consistently demonstrate vigorous price competition far below the “safeguard caps” set by the EU rules, that the rules themselves did not really bring any significant change in the state of the market. In their view, the data collected shows that the price is not a barrier for using intra-EU services.

2.5. Conclusions about the performance of the intra-EU communications rules in terms of consumers / prices / volumes

According to the data collected it appears that the regulation induced a reduction of average revenue per unit for regulated intra-EU communication services for both mobile and fixed services. However, this reduction did not have a significant impact on the regulated volumes consumed or on the number of consumers using these services. In addition, as the fluctuation in the percentage of price regulated intra-EU services (vs) total intra-EU services (for consumers only) is not very significant, it could be concluded that, in general, the regulation did not have a significant impact on the consumption of intra-EU communication services.

3. Overall performance of the intra-EU communications rules in terms of derogation procedure

3.1. Analysis of derogation procedure

BEREC notes that there were no applications for a sustainability derogation for applying regulated intra-EU communications tariffs since the entry into force of the price caps on 15 May 2019. When looking at the cost of an intra-EU call originating from the home network, it is important to take into account that the cost consists of the origination on the home network and the international transit (including also the termination cost) or a termination fee in case of direct international interconnect. The total wholesale cost for an intra-EU call is expected to be lower than the wholesale cost of an EU roaming call. For an intra-EU call at retail level, the

home operator is allowed to charge 0.19 EUR excluding VAT. In case of EU roaming, only domestic fees can be applied with most probably higher wholesale costs. Therefore, the lack of sustainability applications for intra-EU calls is not surprising because on the basis of the actual wholesale costs and retail revenues, there is no reason that there can be such a negative impact on the domestic pricing model that a derogation would be necessary. Of course, this might in theory change if the retail revenue possibilities for intra-EU calls are brought down to the domestic level itself, since derogations are observed for roaming with the RLAH regulation in the EU. Therefore, in such a case the sustainability mechanism might need to be simplified and be put in an appropriate cost-benefit ratio (e.g. not including the requirement to do both benchmarking to distinguish from most other (fixed and mobile) Union providers and based on this, a comprehensive request of the relevant margin – see also chapter 7).

3.2. Summary of views from the call for input

During the call for input, no stakeholder views were provided regarding the functioning or possible improvement of the derogation procedure.

3.3. Conclusion about the derogation procedure

The lack of sustainability applications for intra-EU calls is not surprising taking into account the estimated wholesale costs and the price caps. This might in theory change if the retail revenue possibilities for intra-EU calls are brought down to the domestic level itself. In such a case the sustainability mechanism might need to get simplified.

4. Alternatives/Substitutes to intra-EU communication services

4.1. Analysis of alternatives/substitutes

An increasing number of consumers have access to certain Number-Independent Interpersonal Communications Services (NI-ICS) for their international calling needs at lower charges than Number-Based Interpersonal Communications Services (NB-ICS) or without monetary payment. For the purpose of this opinion on Intra-EEA communications regulation, BEREC understands by NI-ICS, those services that are suitable to replace regulated intra-EU communication. Categories within NI-ICS include in particular, messaging services and video conferencing services⁹.

⁹ See also BoR (22) 187 [Draft BEREC Report on Interoperability of Number-Independent Interpersonal Communication Services \(NI-ICS\)](#) Table 1, p. 8

According to the 2021 Special Eurobarometer Survey on E-Communications in the Single Market¹⁰, there are many differences across Member States in the methods used for international communications within the EU. While the overall use of traditional communication services is declining, they still remain popular among those aged 55 years and above.

In 2021, PPMI performed an analysis on behalf of BEREC on consumer perceptions and behaviour on digital platforms for communication.¹¹ The result of the analysis showed a strong preference for NI-ICS applications for cross border communications. As shown in the first bar of Figure 22, 71 % of the respondents indicated that they used such applications for cross-border communications exclusively. Another 15% prefer a combination of application and traditional communication means. Solely 14% of the respondents preferred using traditional electronic means of communication for cross-border communication exclusively.

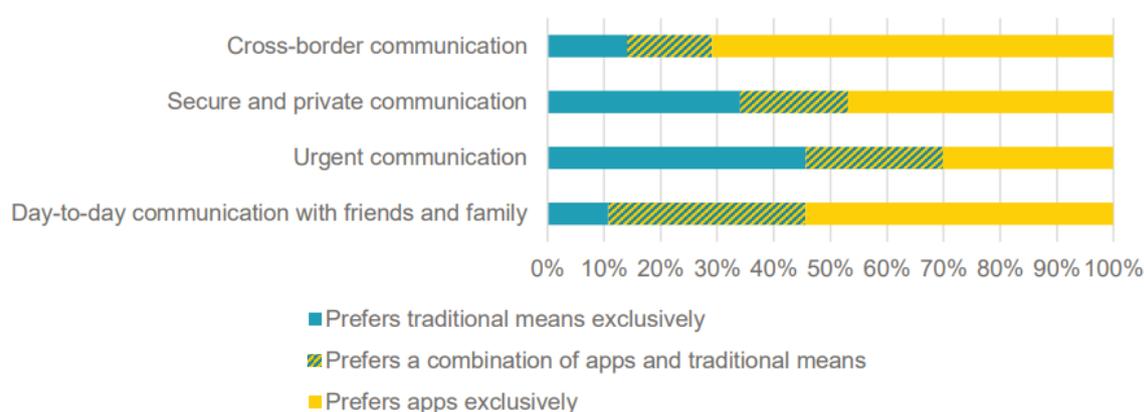


Figure 22 Preferred means of communication. Source: PPMI report on consumer perceptions and behaviour on digital platforms for communication, 2021.

However, it has to be noted that the presence of their social contacts on the same application motivates the consumers to use the same specific service. The interoperability of traditional communication services is symmetrical. Traditional electronic communication services like voice service or SMS are interoperable, regardless of their size, number of users and their market position, whereas it is not the case for the interoperability of most NI-ICS today. NI-ICS are predominantly based on proprietary protocols and are therefore not interoperable. Thus, the choice of the NI-ICS provider matters, as one user can only interact with other users of the same provider. Furthermore, in contrast to NB-ICS, the array of functionalities associated with messaging services is broader and may vary from one service to another.¹²

¹⁰ [E-Communications in the Single Market - Iouviou 2021 - Eurobarometer survey \(europa.eu\)](#)

¹¹ [Analysing EU consumer perceptions and behaviour on digital platforms for communication. Analysis report. \(europa.eu\)](#)

¹² See BEREC report on interoperability of Number-Independent Interpersonal Communication Services (NI-ICS), December 2022, BoR (22) 187, p. 38.

End-to-end connectivity between users might be indirectly threatened in the future by an increased use of NI-ICS that are not sufficiently interoperable.¹³

Interoperability obligations for certain NI-ICS are introduced under the DMA¹⁴ which applies to core platform services (CPS), including NI-ICS, as well as to other services provided or offered by gatekeepers to business users established in the EU and/or end users established or located in the EU. Gatekeepers are designated pursuant to Art. 3 of the DMA, if the CPS fulfils the following conditions: it has a significant impact on the internal market, it provides a core platform service which is an important gateway for business users to reach end users and it enjoys an entrenched and durable position in its operations, or it is foreseeable that it will enjoy such a position in the near future. According to Art. 7 DMA, where a designated gatekeeper provides NI-ICS, it shall make the basic functionalities of its NI-ICS interoperable with the NI-ICS of another provider offering or intending to offer such services in the Union, by providing the necessary technical interfaces or similar solutions that facilitate interoperability, upon request, and free of charge. This interoperability applies only to designated gatekeepers. Interoperability for NI-ICS is therefore in any event not symmetric in nature (that is, obligations do not apply across-the-board to all NI-ICS providers) but rather asymmetric, in that only some providers of NI-ICS services may be subject to such measures.

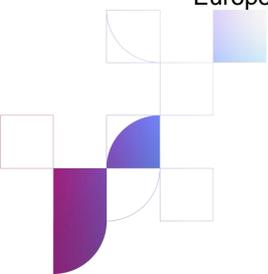
NI-ICS are also regulated under the EECC.¹⁵ NRAs may impose obligations under Art. 61(2) sub c) EECC, requiring interoperability of NI-ICS providers, where “*end-to-end connectivity between end-users is endangered due to a lack of interoperability between interpersonal communications services, and to the extent necessary to ensure end-to-end connectivity between end-users, obligations on relevant providers of number-independent interpersonal communications services which reach a significant level of coverage and user uptake, to make their services interoperable*”. This means that this interoperability obligation may be imposed on a case-by-case basis only on NI-ICS that have a significant level of coverage and user uptake. Furthermore, according to Art. 61(2) of the EECC, NRAs or other competent authorities are allowed to impose interoperability only to the extent necessary to ensure interoperability of interpersonal communications services and if the EC, after consulting BEREC, has found an appreciable threat to end-to-end connectivity between end-users throughout the EU or in at least three Member States and has adopted implementing measures specifying the nature and scope of any obligations that may be imposed. Thus, this provision constitutes an asymmetric regulation that is addressing only providers that have a significant level of coverage and user uptake.

On the one hand, according to BERECs draft report on interoperability of NI-ICS, 71% of end-users indicated that they use messaging services for cross-border communications exclusively. In addition, nearly half of the European end-users (45%) state that their use of

¹³ This is assumed in Recital (149) of the EECC.

¹⁴ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (OJ L 265, 12.10.2022, p. 1-66).

¹⁵ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36-214).



messaging services increased over the preceding 12 month¹⁶. Overall, messaging services are changing communications behaviour. On the other hand, there is a certain lack of interoperability of NI-ICS and mainly traditional voice and SMS services (mobile and fixed) currently ensure the any-to-any principle within the Union. Therefore, the EC should also take into account (potential) substitutability of intra-EEA communications by NI-ICS, especially with view to further analysis of a rapidly changing environment.

4.2. Summary of views from the call for input

Several stakeholders representing operators (GSMA-ETNO, ECTA, APRITEL, PIIT) consider that OTT services provide an alternative way of communication also for intra-EU communications for the limited number of users to carry out intra-EU communications. As substitutes, NI-ICS create a competitive pressure on the market leading to price levels below the price caps. Thus, this low level is not due to the regulation, and therefore the regulation itself is not justified anymore.

MVNO Europe considers that one of the factors justifying a critical examination of the regulation is the wide take-up by users of free of charge Internet-based services.

For BEUC representing consumers, higher, often prohibitive, prices actively discourage and deter consumers from using traditional telecommunications services for intra-EU communications, oblige them to look for alternative digital services and penalise those who are most vulnerable due to difficulties of accessing those services or because they are not sufficiently “tech savvy” to use the new digital means of communication (mostly elderly people). BEUC emphasises that telecoms services and OTT communications services are not interchangeable as telecoms services are more widespread, in some instances of higher quality and have a wider reach and interoperability.

4.3. Conclusions about alternatives/substitutes to intra-EU communication services

NI-ICS serve as an alternative to intra-EU communication services. However, there are limitations for older consumers who might not be very familiar with this type of communication services. Another issue in relation to NI-ICS is the lack of interoperability between each other. EECC and DMA include some relevant provisions that might be applicable for some NI-ICS providers (ie digital gatekeepers and/or providers that have a significant level of coverage and user uptake).

EC needs also to take into account (potential) substitutability of intra-EEA communications by NI-ICS, especially with view to further analysis of a rapidly changing environment.

¹⁶ BoR (21) 89, PPMi Report: Analysing EU consumer perception and behaviour on digital platforms for communications, 11.06.2021.; [BEREC \(europa.eu\)](https://berec.europa.eu)

5. Comparison between roaming and international communication services

5.1. BEREC's analysis

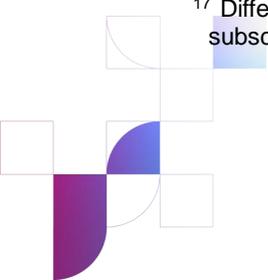
While using international roaming, end-users are using a foreign cellular network in a foreign EU/EEA country. The framework for international roaming services is set out in Regulation (EU) 531/2012, replaced by EU 2022/612. The Roaming Regulation mandates the usage of roaming voice, SMS and data like at home (roam-like-at home, RLAH), i.e. at no additional cost. Therefore, if calls are made from another country, or in other words, through a network other than the domestic one, these calls are considered to be roaming calls regardless of which number is called (domestic number or EEA-based number).

In contrast to the above, intra-EU communication is based on calls from domestic networks to another Member State. If users are calling from a domestic mobile network or using a domestic fixed phone line to call or text abroad, then these are considered to be international calls. As already mentioned in previous chapters, for calls or SMS to EEA countries, there is a regulated price cap of 0.19 EUR for voice and 0.06 EUR for SMS (plus VAT).¹⁷ In general, this is higher than the roaming charges because for domestic usage, bundles are the prevailing billing practice and EU/EEA roaming is not charged separately (as the volume of the bundle is consumed and there is no additional charge).

As the main difference between roaming and international communications is the network being used by the subscriber to initiate the call or SMS, the interplay between these legal frameworks leads to a situation which might confuse subscribers. While roaming within the framework of RLAH, subscribers can make calls and send SMS to any EEA country at domestic rates with no extra cost. This means that a French subscriber can call a Romanian subscriber at the domestic rate while travelling in Sweden. However, once returning to their own country, consumers pay at the rate of an intra-EU call, for which a maximum per minute price cap applies. So once the French subscriber returns to France and calls the same Romanian subscriber, they will be charged at non-domestic rates. This principle works the same way for SMS.

A source of complaints from consumers is that they do not fully understand that international calls are not covered by the Roaming Regulation. Around 45% of NRAs have received complaints from customers who did not know that international calls are not covered by the Roaming Regulation (i.e. the RLAH regime), however, the number of complaints in each country in 2021 was low (less than ten). It should be also noted that for consumers, an international call might be perceived as an intra-EU call, a RoW roaming call or a RoW international call. These aspects were not differentiated in the data collection.

¹⁷ Different rules apply when making calls or sending SMS to non-EU/EEA countries, regardless of whether the subscriber is roaming or not, because there is no price regulation for this type of communication.



5.2. Summary of views from the call for input

Stakeholders provided highly divergent views regarding the ability of end users to differentiate between intra-EU communications and intra-EU roaming communications, as well as regarding their ability to avoid charges by using dedicated packages or NI-ICS-based alternatives.

Several stakeholders underlined that telecommunications providers offer packages for intra-EU communications, allowing end users to purchase bundles tailored to their communications needs. On the other hand, some of these stakeholders warned about the effects of anomalous usage on telecommunications providers, if the charges are lowered further or abolished.

Other stakeholders pointed out the increasing reliance of end users on alternative means of communication based on NI-ICS. According to these stakeholders, Internet-based communications services are popular and offer communications services at no or very low cost.

One respondent to the call for input stressed the difficulties for consumers to understand the different premises of roaming and intra-EU communications charges, outlined further above. In particular, this respondent challenged the view that end-users should switch to alternative means of communication provided by NI-ICS by citing their reliance on data connectivity, which is not necessarily given, as well as a lack of interoperability and accessibility. In addition, this respondent countered the argument that the packages offered were appropriate for the needs of the majority of end users, which the stakeholder characterised as limited, while the terms and conditions remained unattractive.

Another respondent cited the difficulties of operating businesses across EU/EEA borders due to the intra-EU communications charges incurred by cross-border advertising and customer contacts as inconducive to the Single Market.

5.3. Conclusions about the comparison between roaming and international communication services

The different regulatory regimes between EU roaming and intra-EU communication leads to a situation which might not be easily understandable for subscribers as regards the different charging. This might be more challenging for cross-border workers as well as people living along the borders.

6. Relation between retail prices and wholesale costs

6.1. BEREC's analysis

On the retail level, the home operator is allowed to charge 19 EUR cent per minute excluding VAT for an intra-EU call. On the other hand, the single maximum EU wide fixed voice



termination rate is 0.07 EUR cent per minute, and the single maximum mobile voice termination rate is 0.2 EUR cent per minute after the end of 2023.

It can be seen that the regulated costs of call termination in fixed and mobile networks according to the delegated act of the EC are many times lower than the retail price for intra-EU calls. To that end, it can be concluded that there is a margin for the provision of fixed and mobile intra-EU calls.

BEREC conducted an estimation of the total cost for providing an intra-EU call for the period 2019-2024. For this estimation, BEREC used data from the Axon cost model¹⁸ as well as data collected for mobile termination rates¹⁹ and the maximum single union-wide termination rates foreseen in the Commission Delegated Regulation (EU) 2021/654. The following graph provides a comparison of the intra-EU call price cap and the cost estimation. It appears that the price cap is more than seven times higher than the relevant estimated cost for providing intra-EU calls.

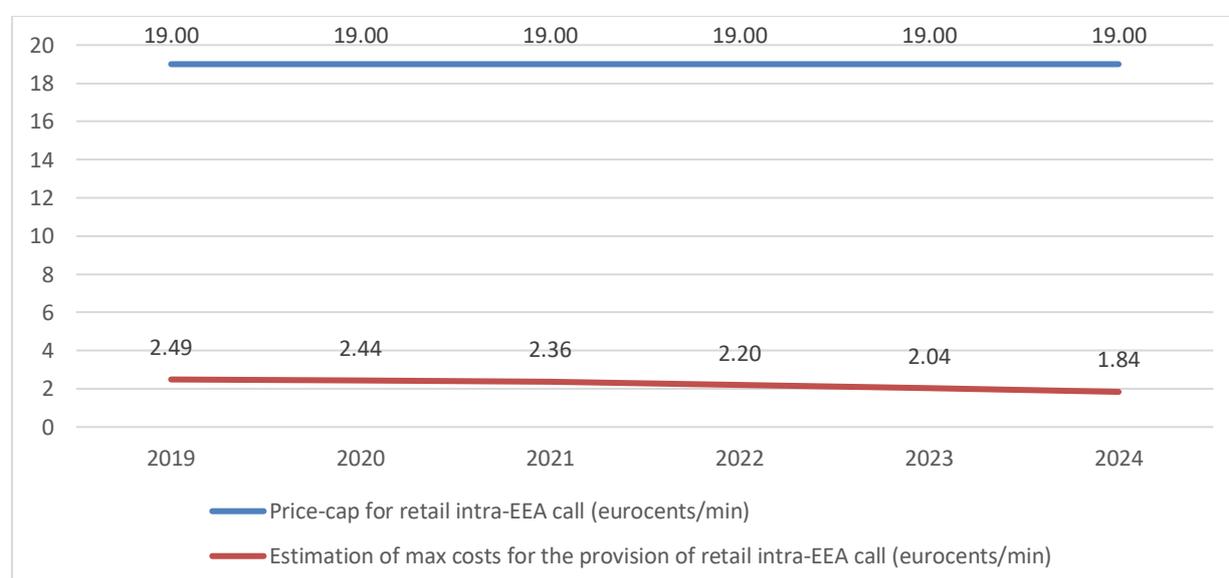


Figure 23 Price cap vs. cost estimation for intra-EU calls in Euro cents per minute.

For SMS services, this comparison is not very easy as BEREC does not have information about the level of SMS termination rates in some cases. However, according to data that BEREC has collected in the context of preparing the termination rates report,²⁰ the average SMS termination rate is less than half of the price cap while the SMS origination and transit costs are expected to be very low due to the nature of the service. Furthermore, termination rates of SMS services differ across the EU. For example, the SMS termination rate is 4.96 EUR cents in Belgium and 1 EUR cent in France.

¹⁸ The maximum cost estimated for the wholesale service of roaming inbound outgoing off-net call (as a proxy for call origination) as well as the estimation for transit costs are used.

¹⁹ BEREC used mobile termination rate instead of the fixed termination rate (which is lower) in order not to underestimate the total cost.

²⁰ BEREC report, Termination rates at European level, 30 June 2021, BoR (21) 159.

As the termination rate for SMS services is not regulated, there might be cases where the margin between the cost and the retail price cap does not suffice to cover the costs. This could be even more problematic in case the price cap for SMS services decreases. The differing SMS termination rates, on the other hand, may lead to many disputes between operators which NRAs would have to resolve, and potentially also to tariff asymmetries between Member States.

6.2. Summary of views from the call for input

Some operators face issues with transit costs. One operator argued that under certain circumstances, it pays well above the 0.19 EUR price cap in transit costs alone. They would like to see transit prices regulated as well as on a wholesale basis. They also note that the situation with transit prices especially worsened with the introduction of the so-called origin-based-rates (OBR) across Europe during the last few years.

Furthermore, some operators noted that any intention to review prices for intra-EU communications must consider the wholesale component. In the case of SMS, a proposal to eliminate the surcharges applicable to these communications may result in the obligation of operators to make these services available at negative margins due to the lack of harmonisation of termination rates for SMS at European level.

6.3. Conclusions about the relation between retail prices and wholesale costs

From a cost perspective, according to the available data, the current price caps are significantly higher than a rough estimate of the costs required to offer intra-EU calls. BEREC considers that the high inflation rates observed in the past months in Member States do not alter this conclusion as the estimated margin is significantly high. For the case of SMS, due to the lack of complete information about SMS termination rates, such an analysis could not be provided. Some operators raised the issue of high transit prices which according to their feedback are in some cases higher than the retail price cap for intra-EU calls, posing a particular challenge for small providers. Therefore, SMS termination rates and transit charges need to be taken into account when deciding about the future of the regulation.

7. Proposals for improvement of the Regulation

7.1. Summary from call for input

BEUC proposes to put an end to retail surcharges for intra-EU communications by introducing regulatory obligations in the review. Providers should only be able to additionally charge relevant direct costs that are objectively justified and demonstrated. Appropriate safeguards should also be introduced; for instance, to ensure legal certainty and prevent abuses, the BEREC Guidelines on intra-EU communications could be updated to elaborate more clearly

on its general principles. Together with NRAs, the European Commission could also be tasked with additional competences to closely monitor the activities of telecom operators in this regard.

At the very least, BEUC is of the view that the review should introduce a principle of phasing-out of the retail price differences between electronic communications services terminating in the same Member State and those terminating in another Member State to ensure that the price caps currently predicted are substantially reduced over time. Ultimately, the price caps on intra-EU communications should aim to reach the prices practiced for domestic communications.

One contributor identifies a clerical error which refers to the case when a customer switches back from an opt-out (deregulated) offer to a regulated one and asks which offer components can change. This contributor points out the following wording in Article 5a (4):

*“4. Consumers may switch from or back to the tariffs laid down in paragraph 1 [ndr: the regulated one] within one working day of receipt of the request by the provider, free of charge and providers shall ensure that such a switch does not entail conditions or restrictions with regard to elements of the subscriptions other than **regulated intra-EU** communications.*

This contributor believes that a clerical error occurred in the bold text above and provides a suggestion for modification which it believes aligns better with the spirit of the regulation:

*“4. Consumers may switch from or back to the tariffs laid down in paragraph 1 [ndr: the regulated one] within one working day of receipt of the request by the provider, free of charge and providers shall ensure that such a switch does not entail conditions or restrictions with regard to elements of the subscriptions other than **international** communications”.*

Another contributor expressed its view on the opt-out back/forward clause. Regulation 2018/1971 prescribes that any change shall be performed in one day and free of charge, but unfortunately does not foresee a clause like the one in the Roaming Regulation, which allows operators to delay a switch “until the previous roaming tariff has been effective for a minimum specified period not exceeding two months”, in order to avoid opportunistic behaviours.

The same contributor also provides its opinion on interrelation among Commission Delegated Regulation (EU) 2021/654 and BEREC Regulation. According to the contributor, there is a case of coherence that relates to the countries where the two regulations are applicable. Commission Delegated Regulation (EU) 2021/654 applies to the 9 outermost regions of some EU countries.²¹ At the same time the same regulation does not apply to the 13 overseas countries and territories.²²

²¹ Martinique, Mayotte, Guadeloupe, French Guiana and Réunion (French overseas departments; Saint-Martin (French overseas community); Madeira and the Azores (Portuguese autonomous regions); Canary Islands (Spanish autonomous community).

²² Aruba (NL), Bonaire (NL), Curaçao (NL), French Polynesia (FR), French Southern and Antarctic Territories (FR)*, Greenland (DK), New Caledonia (FR), Saba (NL), Saint Barthélemy (FR), Sint Eustatius (NL), Sint Maarten (NL), St. Pierre and Miquelon (FR), Wallis and Futuna Islands (FR).

Natko Horvat informs that the regulation in question (more specifically its price caps provisions) should include the retail tariffs intended for business users and value-added providers.

7.2. Opinion of BEREC for areas for amendments and future improvement of the intra-EU communications rules

BEREC assumes that recital 53 in the Roaming Regulation is meant to establish a link between roaming in the EU/EEA and intra-EU communication. According to this, the extension of the measures of the Roaming Regulation should have a direct impact on a possible extension of the intra-EU measures.

In this context, BEREC is called to support the Commission to assess the effects of the existing measures introduced by the intra-EU regulation and to determine whether and to which extent there is an ongoing need to reduce or extend the application of the price caps in order to protect consumers. That assessment should take place at least one year before the expiry date for the intra-EU regulation. BEREC takes up the requirement through this Opinion, based on data which BEREC has collected since entry into force of the price cap regulation of intra-EU communications to support the Commission in deciding whether price caps are still appropriate and, if so, at which level.

Since the introduction of regulated intra-EU communications and the corresponding sustainability mechanism, NRAs have not received any application for additional charges on top of the price caps in any Member State. The price caps seem to be high enough: retail prices are currently (far) below retail caps (e.g. 0.06 EUR/min for mobile intra-EU calls; three times lower than the cap – see Figure 5 and 0.03 EUR/min for fixed intra-EU calls; six times lower than the cap – see Figure 16). The reason may also be the intra-EU volume representing only a small fraction of the average communication profile of a consumer, and/or because the sustainability process appears too complex and requires great effort, especially from a cost-benefit perspective (i.e. benchmark and data collection). Therefore, BEREC suggests that in case the sustainability process is considered to be necessary, it should be simplified. Moreover, as mentioned above, in case of closing or diminishing the charge gap between RLAH and intra EU communications, BEREC advises to take into account wholesale SMS termination rates and transit charges.

In general, there is an issue in the common understanding of roaming in the EU/EEA and intra-EU communications. Not all European citizens immediately understand the distinction between the charges of intra-EU services and roaming services offered under RLAH regime. In case the differences in the regulations will remain, the distinction between intra-EU pricing and RLAH should be highlighted even more clearly, for example through accompanying communication campaigns.

Furthermore, BEREC agrees that the drafting of Article 5a (4) needs to be adapted according to the suggestions received in the BEREC call for input. BEREC also agrees that the rules for switching between tariffs of the Roaming Regulation is more fit for purpose than the ones of BEREC Regulation for intra-EU communications. Finally, BEREC suggests that EC needs to



further examine the issue raised during the call for input about the interrelation among the Commission Delegated Regulation (EU) 2021/654 and the BEREC Regulation.



Annex 1 – Summary of the Call for input about the Review of the Intra-EU Communications Regulation

This Annex summarises the responses sent by stakeholders to the call for input about the Review of the Intra-EU Communications Regulation (hereinafter – Intra-EU Regulation). The BEREC call for input was open from 18 November to 5 December 2022. In order to review the functioning of the Intra-EU communications regulation, BEREC published a call for input about the Review of the Intra-EU Communications Regulation and requested stakeholders to provide suggestions for improvements/changes taking also into account the requirements of the Roaming Regulation laid down in recital 53.

In response to the consultation, BEREC received 12 contributions from the following stakeholders²³:

1. APRITEL;
2. BEUC;
3. Contributor (Confidential);
4. DREI;
5. ECTA;
6. ETNO-GSMA;
7. Liberty Global;
8. MVNO Europe;
9. Natko Horvat;
10. NOS Comunicacoes, S.A (hereinafter – NOS);
11. PIIT;
12. SIPGATE.

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.

a. General comments

Overall, the stakeholders welcome the opportunity to provide feedback on the Intra-EU Regulation.

ECTA appreciates that BEREC is offering stakeholders the possibility to contribute to its preparation of an Opinion on this topic, but wishes to emphasize that: a) the timeframe given by BEREC for responding to the Call for Input is not fit for purpose. This may affect the quality of some responses; b) the fact that stakeholders' responses will not be published is a matter for concern, because it implies that the elements relied upon by BEREC in preparing its Opinion will not be known, and there will be no opportunity for stakeholders to analyse and, if necessary, rebut points made by other stakeholders; c) two-stage consultations, consisting of

²³ In alphabetical order.

a call for input, and a consultation on precise BEREC text proposals, have worked well. There is sufficient time to do so in this case. A full public consultation should be held on any proposed BEREC Opinion.

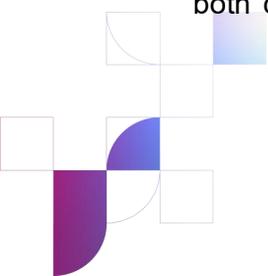
ECTA wishes to recall that the Regulation on Intra-EU Communications is a legal instrument that has been characterized by serious anomalies: a) the origin of the introduction of a retail cap on Intra-EU communications is particularly unusual, because it was not the subject of a European Commission legislative proposal. As a consequence, the impact assessment which is required to accompany EC legislative proposals was not conducted; b) the mechanism for its introduction was a late addition to a largely unrelated piece of draft legislation, i.e., the insertion of Article 50 into the Regulation governing BEREC and the BEREC Office's duties - Regulation 2018/1971. This could be described as a 'Rider'; c) the EU regulatory framework for electronic communications (2002-2009 Directives), the EECC (2018 directive), and the body of accompanying European Commission and BEREC guidance, as well as decisions taken by NRAs, all point towards a determined focus on wholesale markets to address competition problems and pricing, rather than direct regulation of retail prices.

There is a large consensus that retail price regulation is to be phased out, where markets work, including in circumstances where market failures are corrected with the support of regulatory intervention at the wholesale level. In the case of telephone calls, underlying wholesale call termination charges are governed by Art. 75 of the EECC, and in application thereof, the EC Delegated Regulation setting a single maximum Union-wide mobile voice termination rate and a single maximum Union-wide fixed voice termination rate.

BEUC states that Roam Like at Home has been an EU-wide success story for consumers and businesses alike. EU regulatory intervention at retail and wholesale level made this change possible. However, the project of a true single market for digital and telecommunication services has not yet been fully achieved. The missing element is ending the price differentiation for intra-EU communications. The introduction of price caps under the BEREC Regulation in 2018 was a welcomed first step to address this problem. However, substantial price differences remain between domestic and international communications within the EU, hindering the establishment of a Single Market for Telecommunications and ultimately harming consumers. Recital 53 of the Roaming Regulation calls on the European Commission to assess the effects of the existing price caps under the Intra-EU Communications rules and "determine whether and to what extent there is an ongoing need to reduce the caps in order to protect consumers".

BEUC believes that BEREC's opinion should reflect its latest data on consumption patterns of intra-EU communication services, which shows that the introduction of the Intra EU price caps has not changed the international communication market substantially. Prices often remain prohibitively high when compared to domestic prices. This continues to represent a barrier to the functioning of the internal market and is fundamentally unfair to consumers.

The example of the Roaming Regulation proves that only ambitious regulatory intervention to eliminate surcharges, bringing the price cap down to the same levels of domestic rates, can resolve the problem. Completing the Single Market for telecommunications stands to benefit both consumers and businesses alike: similar to 'Roam Like at Home' it would unlock an



untapped source of consumption and revenue, meaning a win-win for both consumers and operators.

Moreover, **BEUC** adds that with the end of roaming charges in the EU, the continuation of surcharges for intra-EU communications continues to stand out as a particularly problematic and unjustified practice from a consumer perspective. Consumers who call someone abroad inside the EU are faced with high bills and often must think twice before calling friends or family across borders.

With the adoption of the new EU Roaming rules, EU legislators recognised the necessity to address this issue, as the last standing obstacle to achieve a full Single Market for Telecommunications. Recital 53 of the Roaming Regulation is a clear call on the European Commission to assess the effects of the existing price caps and “determine whether and to what extent there is an ongoing need to reduce the caps in order to protect consumers”. The text recognises that European consumers are not always able to distinguish between access to electronic communications services while roaming and intra-EU communications, pointing out that “parallels can be drawn between these two markets from a consumer perspective.”

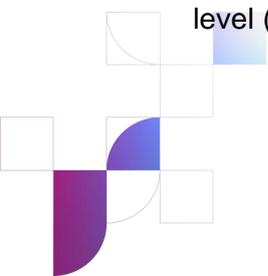
BEUC welcomes that the importance of this issue has been underlined and fully supports the call on the European Commission to come back with a clear analysis and proposals on this matter. **BEUC** have long advocated in favour of the creation of a true single market for digital and telecommunications services and the removal of any differentiation between national and intra-EU communications.

MVNO Europe states that as underlined in its response to the Draft BEREC WP’23, **MVNO Europe** considers that several factors justify a critical examination of this regulatory instrument including the existence of various competitive offers (notably from generalist and from specialist MVNOs that target customers making many international calls), the inclusion of unlimited intra-EU calls in unlimited calling bundles, and the wide take-up by users of free of charge Internet-based services. More generally, it is widely understood that this regulatory instrument lacks coherence with the EU regulatory framework for electronic communications (which has a determined focus on addressing pricing issues where necessary at the wholesale level, rather than direct intervention on retail prices).

ETNO-GSMA points out that the observations provided have been prepared within an unusually short consultation period for the collection of stakeholder feedback by BEREC. To respect internal governance rules and approval processes in **ETNO-GSMA**, only high-level feedback from members have been collected at this stage. Therefore, **ETNO-GSMA** kindly asks BEREC for a further bilateral dialogue on this topic, during which, **ETNO-GSMA** will be able to provide more evidence and argumentation in support of its viewpoints.

ETNO-GSMA reflects on the work done by BEREC collecting the inputs for three consecutive “Intra-EU communications BEREC Benchmark Reports”, and on its own experiences with the market development.

ETNO-GSMA points out, first and foremost, that regulation of intra-EU calls is in many ways unprecedented. It covers domestic services, it came in the form of a direct price-cap set at EU level (Regulation (EU) 2018/1971) and it was not based on any analysis of individual national



markets or considering the adequacy of competition law to resolve the perceived bottlenecks. In **ETNO-GSMA** view, the intervention should have been preceded and justified by a proper market assessment to avoid unintended and negative consequences. There was for example no proper reflection on the competitive impacts of the variety of tariff options for intra-EU communications offered by providers of number-based interpersonal communication services; the existence of offers enabling access to the services of alternative operators over the number-based interpersonal communication service, such as call-by-call, pre-select and call-through; or the availability and extensive use of web-based interpersonal communication services provided over the internet (NI-ICS (WhatsApp like services)).

Further, data gathered by BEREC has consistently demonstrated vigorous price competition far below the “safeguard caps” set by the EU rules, and so the rules in themselves did not bring any step change in the state of the market. In **ETNO-GSMA** view, this strongly indicates that the intervention in this market has not been warranted, as the same results would have been achieved in the absence of any EU rules.

ETNO-GSMA is therefore convinced that there is neither a need to prolong nor to modify the current rules beyond their expiration date, as competition on intra-EU communications is proven.

b. Price caps

ECTA informs that Section 4 “Main Findings” of BEREC’s Intra-EU communications Benchmark Report, BoR (22) 1305, covering data for April 2021 – March 2022, shows that retail prices for regulated Intra-EU communications were on average as follows: a) +/- 3c/min for fixed calls, i.e. more than 6 times lower than the cap of 19cc19c/min. b) +/- 6cc6c/min for mobile calls, i.e. nearly 3 times lower than the cap of 19c/min. c) +/- c4c/sms, i.e. well below the cap of c6c/sms. Alternative tariffs for fixed calls are higher (also well below the retail cap) but are not offered by many operators, and have almost insignificant take-up; alternative tariffs for sms are lower (+/- c3c/sms) than the regulated tariffs, as is shown in Section 4.

Additionally, **ECTA** sees that markets evolve more and more towards bundled offers (in both fixed and mobile markets) including intra-EU calls and SMS. According to the 2018 BEREC report on intra-EU calls, which dates back to 2018, in 10 Member States more than 50 % of the total intra-EU minutes originating in fixed networks were included in bundled offers, whereas, in four Member States more than 30 % of the total intra-EU minutes originating from mobile networks were part of the bundled offers. It is very likely that if BEREC were to update data on bundling, these percentages would be even greater today.

ECTA emphasizes in the strongest terms that the competition provided by challenger operators is the essential explanatory factor for the fact that real-world retail prices are far below the caps. **ECTA** members actively use lower prices for intra-EU calls, and the inclusion of intra-EU calls in unlimited bundles, as a way to attract customers. Challenger operators differentiate themselves from incumbents by providing innovative services and packages (e.g., being first to offer far cheaper retail prices for calls, being first to offer unlimited call bundles, being first to include intra-EU calls in bundles, etc.).

NOS and APRITEL shared ideas that there are no reasons to reduce the current caps, since:

1. Regulatory intervention did not represent an increase in consumption, as highlighted by BEREC's benchmarks.

In the three “Intra EU Communications Benchmark Data Reports” already published by BEREC, the conclusions are clear “According to the data collected, the introduction of Intra EU communications regulation has not changed the international communication market substantially”.

In fact, looking at the most recent model, this finding is easily verifiable consulting the EEA average consumption patterns (as for 31 March 2022):

- 31.75 of fixed intra-EU minutes per month per subscriber (that used intra-EU communications services). This number compares with 32.44 minutes by the end of March 2019, when prices were not subject to a cap.
- 9.59 of mobile intra-EU minutes per month per subscriber (that used intra-EU communications services). Although this number is higher than the value calculated in 2019, since 2020 this average has registered successive declines.
- 0.61 of mobile Intra-EU SMS per month per subscriber (subscribers that used Intra-EU communications services). Again, there is also a constant decline in intra-EU SMS communications and the average consumption (less than 1 SMS per user) is now lower than when these prices were not regulated.

NOS and APRITEL show the numbers presented for Portugal - these values are below the European average, something that happens to a significant number of countries, since the average value is influenced by some outliers that present higher consumption patterns from those calculated in most Member States.

Therefore, it is legitimate to state that the price for intra-EU communications does not constitute a barrier for usage. If so, there would certainly have been an increase in their use when these prices were capped. Furthermore, data also indicates there is no evidence that lower prices would result in a higher level of use of intra-EU communications.

Additionally, the average numbers calculated for these communications are residual, if compared to total communications consumption. For example, in Portugal, at the end of the 1st semester of 2022, the number of minutes of conversation per mobile voice access was, on average, 236 per month, of which only 2 minutes were intended for international communications. Moreover, not only did consumption remain unchanged, but intra-EU communications continue to be used by a small share of customers of telecom services.

2. There is no significant demand for these services, which are used by a small number of customers.

The information contained in the most recent BEREC's Intra EU Communications Benchmark Data Report demonstrates that the demand for these communications is not elastic, and that the number of customers using intra-EU communications is limited, compared with the total number of customers.



For this concern, **NOS** and **APRITEL** highlight the following indicators regarding the degree of use from subscribers using intra-EU communications, considering the total number of active subscribers:

- 6,18 % of fixed subscribers
- 14,56 % of mobile subscribers.

As for Portugal, these usage levels are even lower than the European average. More significant is the fact that the usage levels at the end of March 2022 were significantly lower than those seen in March 2019, before the entry of price caps. These levels have registered declines in all reporting periods.

3. *This may result in the revision of domestic offers, for the benefit of a reduced number of users.*

If the option to be considered is the one proposed by the European Parliament in the process of revising the Roaming Regulation, that is, applying the domestic price rules for intra-EU communications, this may have an impact on domestic offers.

This impact results from the fact that, currently, most domestic offers for fixed and mobile communications comprise a monthly allowance.

The Portuguese market illustrates this reality, whether is the case of fixed or mobile services, and research carried out indicates that this is also the case in other European countries.

It is important to consider that these offers were not designed to include intra-EU communications, so operators will have to assess to what extent a revision of the volumes of communications included in their monthly allowances is justified.

This question is particularly relevant considering the impact that such an approach may have on the profitability of operators' commercial offers, in a period when significant investments are required by the sector.

Finally, the inclusion of these communications in monthly allowances may lead to abusive and fraudulent use. In this regard phenomena such as One Ring Scam or International revenue sharing fraud should be take into consideration.

4. *Any change on prices would mean an additional pressure for operators, at a time of strong demand for investments.*

The electronic communications market will not be exempt from suffering the consequences of the geopolitical and economic crises that the world is going through.

Among other aspects, due to the impacts on the production chain, either through increased operating costs (from which **NOS** and **APRITEL** highlight energy costs), by increased financing costs (through increased interest rates) or by the disruption in the supply of components for the industry, that will tend to be aggravated with the war in Ukraine.



This context takes place in parallel with a demand for high levels of investment by the sector, with emphasis on the deployment of 5G and very high-capacity networks, necessary to comply with the targets for 2030, established by Europe's Digital Decade.

It is also important to remember the study prepared by Analysys Mason, commissioned by the European Telecommunications Network Operators' (ETNO) association, which concluded that if the proposal of the European Parliament to abolish surcharges for international intra-EU calls was taken forward, operators in the EEA would have lost 580 million EUR in a 12-month period (June 2022 – June 2023) and a cumulative sum of over 2.0 billion EUR in a four-year period.

Additionally, this study indicates that a similar proposal would imply additional costs for operators associated with the process of implementing the new rules, including the review of offers (notification to customers, publication of information), IT and software (preparation of systems), transit (that continue to be supported and would no longer be covered) and the consequent reduction in the wholesale margin.

Therefore, even though it may be seen as positive a reduction on prices for Intra-EU communications, such process must be duly considered in terms of the full impact on the sector, especially when dealing with movements for which the benefits are not clear for most users.

5. The termination rates for SMS are not regulated and/or uniform at European level.

The Commission Delegated Regulation (EU) 2021/654 of 18 December 2020, established a single maximum Union-wide mobile voice termination rate and a single maximum Union-wide fixed voice termination rate. Thus, there is uniformity in the prices charged for the wholesale component associated with voice tariffs.

However, the same does not happen with SMS, whose termination rates are not regulated, and have differing prices in different Member States. In this regard, according to the latest data made available by BEREC, the rates are as disparate as 0.011 EUR in Poland and 0.049 EUR in Belgium.

Therefore, any intention to review prices for intra-EU communications must consider the wholesale component. It should be noted that as for SMS a proposal to eliminate the surcharges applicable to these communications may result in the obligation of operators to make these services available at negative margins.

NOS and APRITEL state that maintaining the current price cap intervention is what should be carefully evaluated, since this kind of intervention should be a last resort tool, to be used only if it has been demonstrated that there is a clear net benefit of such measures, and that these benefits are greater than the associated costs.

In view of all that has been exposed, **NOS and APRITEL** understand that:



- There are no reasons for reviewing the maximum prices associated with intra-EU communications, given that regulatory intervention has not resulted in an increase in demand for these services, which does not prove to be elastic.
- Although prices could be seen as a barrier to the use of these services, the limited number of users has other alternatives for carrying out these communications, namely the services provided by OTT players.
- Any review of maximum prices must be duly considered, given the impact it may have on the sector, especially if the benefits for most users of electronic communications services are clear.
- The arguments presented above and BEREC's benchmarks go in the direction of what should be evaluated is the maintenance of the current price caps for intra-EU communications.

ETNO-GSMA surveys the current status of the market and notes that the three consecutive BEREC reports covering the period from April 2019 till March 2022, were invariably highlighting three key conclusions:

1. *“According to the data collected, the introduction of Intra EU communications regulation has not changed substantially the international communication market.”*
2. *Prices were deep below the “safeguard cap” of 0.19 EUR/minute.*
3. *Through every reported period, prices for mobile communications consistently declined by approx. 12-15%.*

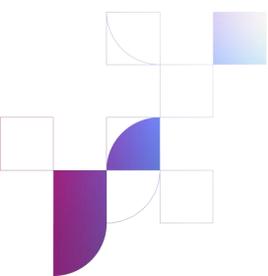
ETNO-GSMA notes that these price reductions are broadly comparable with the overall decline of the ARPU value in Europe. Therefore, there is no evidence that intra-EU communication were priced above competitive levels before the new rules took effect, but rather that they follow the general downward trend in telecom revenue.

The limited price elasticity in the intra-EU communication services market is the result of a market that is already highly competitive.

c. Business users

Natko Horvat points out that the regulation in question (more specifically its price caps provisions) should include retail tariffs intended for business users and value-added providers. Namely, given: a) the openness of the EU market; b) the freedom to provide services in all Member States (MS).

The current regulatory solution where business users of one MS are left to the commercial conditions of mobile operators when calling/SMS advertising its products and contacting its cross-border consumers does not contribute to the aforementioned ideas of EU market openness.



Namely, tariffs intended for business users which include cross-border calls/SMS traffic are still extremely expensive and do not encourage business users to advertise their services in other MS through electronic communications.

d. Wholesale prices

Natko Horvat points out that wholesale price caps (which will follow retail price caps) should be determined by the regulation as well.

Sipgate states that retail prices cannot be separated from the wholesale price. In today's regime, only the retail price of Intra-EU calls is regulated: The price cap for most calls within the EU (plus Liechtenstein, Norway and Iceland) is 0.19 EUR (+VAT). A similar regulation has also been introduced for SMS. This and the Roam-Like-at-Home regulation for mobile users have been major milestones for the protection of private customers in the field of electronic communications.

Every minute that a customer spends in a phone call needs to be purchased on the wholesale level, either directly at the terminating network or - if there is no direct interconnect between the two networks - at a company offering the transit between the networks. Thus, for most of the countries in the world, there is a direct link between the wholesale and the retail price. The cost of the call needs to be borne by the customer that dialled the number. This link is non-existent anymore for calls within the EU. The price cap makes it impossible to charge termination/transit costs higher than 0.19 EUR to the customer.

By establishing the EECC and the linked delegated act, the EU has made sure that calls between networks that are directly linked to each other can be bought at a reasonable cost base. But a regulation for the transit part is missing. Smaller telephone companies - such as **Sipgate** - do not have too many direct interconnects, especially when it comes to international interconnects. There are some networks within Europe that are offered to **Sipgate** by transit networks at a price substantially higher than the regulated 0.19 EUR²⁴.

The situation got especially worse with the introduction of so-called origin-based-rates (OBR) across Europe during the last few years. There are transit networks that are unable to bill calls depending on the PAI of a given call. Thus, to protect themselves from high costs, these companies charge the highest rate that the network in which the call terminates could possibly charge for any call.

Sipgate kindly asks BEREC to find a solution for this problem, for example by expanding the price cap for calls within the EU to the wholesale side of the market, precisely the transit part of the call.

MVNO Europe invites BEREC to exhort the Commission to adapt wholesale rates (termination rates) in case the retail rates for intra-EU communications will be lowered. Such parallel development of wholesale and retail prices becomes even more crucial considering that, in

²⁴ Sipgate provided table with prices offered by interconnection partners in its input.

respect to international calls, MVNOs do not only pay the termination rates but also the respective transit costs in the full amount.

e. Substitutions for intra-EU communications services

DREI referred to a recently published study by the Austrian Regulatory Authority. For end customers, there are countless possibilities and communication channels that they use for intra-EU communication. Traditional voice telephony and SMS now account for only a fraction of the total (intra-EU) communication volume. Nevertheless, traditional voice telephony and SMS are subject to strict tariff regulation, at least for intra-EU communications, which does not take into account the underlying wholesale tariffs for transit to EU countries. For example, providers of voice telephony and SMS in intra-EU communications via public networks are subject to a price-cost squeeze, which results from unilateral regulation of retail prices. This is distorting competition and does not allow these providers a level playing field.

As end customers have a sufficient number of alternative substitution options for intra-EU communications and mainly use them, the relevant EU competition rules require that the regulation of intra-EU communications be repealed completely and without replacement.

ECTA also points that both BEREC and individual NRAs have recognized the growing role and increasingly substitutive effect of internet-based services, enabling calls (incl. video calls) and messaging (incl. richer messaging in terms of functionality). The latest illustration of such recognition was made available on 29 November 2022, when the Austrian NRA published the results of a survey (conducted in July 2022), showing that nearly two-thirds of minutes of voice communication (incl. video) are internet-based, and that 9 out of 10 messages (incl. email) are sent via the internet instead of SMS. It is clear for all to see that consumers in all EU Member States make very extensive use of internet-based services, which are easy to subscribe to and use, which simply require both parties to have the relevant application installed and often have web-based options, and which typically do not require any monetary payment for subscription and usage. Some of these Internet-based services also enable calls to be made, and SMS to be sent, to fixed and mobile numbers, at very low retail prices.

ETNO-GSMA shows that the continuous trend of price reduction is to be attributed to vigorous competition between operators but also in OTT services exercising a strong competitive pressure on European telecommunications providers.

There is an abundant of data showing how widespread and accessible OTT services are, providing readily available alternative ways of communication and services also for intra-EU communications. The immediate proxy for this accessibility is the high degree of social network usage in the EU. Based on Eurostat data, one of the most common online activities in the EU-27 in 2019 was participation in social networking. More than half (54%) of individuals aged 16 to 74 used the internet for social networking (for example, using sites such as Facebook, Twitter, Instagram or Snapchat). These ways of communication are alternatives to intra-EU calls and SMS and should therefore be treated as substitutes.



These facts and especially the conclusions made by BEREC's own reports strongly support **ETNO-GSMA** conviction that neither rules for intra-EU communications laid down in the BEREC Regulation, nor any other intervention, are necessary. Prices for intra-EU calls are significantly below the regulated caps and they are driven by competition also from providers of substituting products and not because of the regulation.

f. Single Market for telecommunications

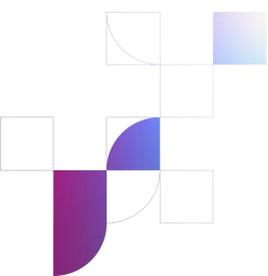
BEUC states that it has consistently called on the EU institutions over the past decade to establish a true single market for digital and telecommunication services. A significant step in this direction was taken in 2017 with abolishment of roaming fees, ensuring that consumers could travel and use telecoms services in the EU without facing exorbitant costs and bill shocks. However, the single market for telecommunications remains unachieved, as the surcharges applied by telecom operators on intra-EU communications still exist. The prices charged by telecommunications operators for placing international calls across the borders of EU Member States are still many times higher than the prices currently practiced at national level or when roaming within the EU. Such prices, often prohibitive for consumers, continue to represent a barrier to the functioning of the internal market.

The introduction of price caps under the intra-EU Communications rules in 2019 was a welcomed first step to address this problem. However, the latest data from BEREC on the consumption patterns of intra-EU communication services confirms that the introduction of the price caps has failed to substantially change the international communications market.

BEUC adds that substantial price differences remain between domestic communications and those terminating in another Member State, both for fixed and mobile. Higher, often prohibitive, prices actively discourage and deter consumers from using traditional telecommunications services for intra-EU communications. Consumers are often left with no choice but to look for alternative digital services (e.g. instant messaging services, video conference platforms). Preventing consumers from resorting to traditional telecom services is especially penalising for those who are most vulnerable, effectively excluding consumers due to difficulties of accessibility (e.g. lack of access to an internet connection) or are simply not "tech savvy" when it comes to the use of the new digital means of communication.

On the contrary, as the experience with Roaming demonstrates, lower prices encourage consumers to use telecommunications services. Data shows that eliminating surcharges for cross-border communications stands to exponentially increase the usage of such services.

Moreover, a true Digital Single Market for telecommunications services cannot be achieved while discrimination and unfair differentiations remain between national and intra-EU communications. In a single market, the country code to which consumers are calling or texting should not matter within the EU. Ending surcharges to intra-EU communications is necessary to finally achieve a true single market for digital and telecommunication services. There should be no discrimination or differentiations between national and intra-EU communications.



g. Intra-EU communication surcharges

BEUC points out that following the abolition of Roaming surcharges in 2016, those for intra-EU communications should have logically followed. In the context of Single Market for telecommunications without borders, the price for this type of communications should, as a principle, be the same as for national communications. European consumers should be able to use fixed and mobile services freely to communicate with someone in another EU Member State without fear of bill shocks. The current differentiation in pricing applied by telecom operators is not only confusing, but ultimately disproportionate and unjustified from a consumer perspective:

- *Confusing*: as recognised by EU legislators themselves, consumers “do not always distinguish between access to electronic communications services while roaming [...] and intra-EU communications” and are often not aware that the Roaming Regulation does not apply to international calls. The cross-border nature of both types of communications confuses consumers regarding the scope of the rules and the reason for a distinction between the abolition of roaming charges - when calling across borders from another EU Member State - and the imposition of intra-EU communications surcharges - when calling to that same (another) EU Member State from home.

- *Disproportionate*: the actual costs that telecom providers incur to connect customers to a foreign network do not substantially differ from domestic connections. Already back in 2013, the European Commission impact assessment for the first Roaming regulation showed that telecom operators do not face significantly higher costs for connecting calls from one EU Member State to another.

- *Unjustified*: in the context of the Single Market and given the latest market trends: Over the last years, the continuous deployment of latest generation connectivity infrastructure such as 4G and, more recently 5G, has only increased the efficiency of the network infrastructure, which has translated in more and better connectivity. The latest Ericsson Mobility Report 2022 confirms that the deployment of 5G will accelerate the current global trends of soaring telecom subscriptions and falling prices.

BEUC also states that intra-EU communication surcharges are harming customers. Disproportionate price differences continue to prevail between domestic voice and text communications and those terminating in another Member State, pushing consumers away from using traditional telecommunication services altogether and driving them into alternative digital services.

Telecom operators have often opposed reducing the cost of intra-EU calls by arguing that consumers can simply resort to ‘free’ services for placing international calls, such as online messaging or video call apps. However, telecoms services and OTT communications services cannot be perceived as simply interchangeable. Telecoms services are still more widespread, in some instances of higher quality and have a wider reach and interoperability than other electronic communication services which rely on data connectivity (e.g. OTT services).

In addition, over reliance on internet services penalises more those who are most vulnerable, especially those consumers who are less ‘tech savvy’ (e.g. those most elderly), or who do not

have access to a smartphone at all. Moreover, the use of these services requires high-speed broadband access, something which is not universally guaranteed or available.

BEUC points that even an IPSOS survey commissioned by the Telecoms representative ETNO revealed that 67 % of consumers who indicate not to use online messaging or video call apps for placing international calls give as their main reason the fact that the people they want to speak to cannot be reached via an app. 36 % of those who did not use apps or similar services cite quality problems, as well as privacy concerns.

Telecom operators also argue that customers in demand of intra-EU communications can already find competitive offers on the market, as most operators provide special bundled offers which include intra-EU communications. However, such offers are not enough for most consumers. Although special offers may prove to be attractive for certain business customers and consumers with a very significant consumption of intra-EU communications, the terms of those offers are often not attractive for the majority of consumers, who have more occasional, unpredictable, or relatively low volumes of intra-EU communications. This range of consumers remains the most affected. Moreover, the most recent data from BEREC ultimately reveals that the market dynamics remain mostly unchanged, confirming that the overall offers provided, and the prices practiced by telecom operators remain unattractive for consumers across the board.

The Roaming example proves that an ambitious regulatory intervention to eliminate surcharges and reduce prices stands to benefit both consumers and businesses alike, unlocking an untapped source of consumption and revenue, meaning a win-win for both consumers and operators.

EU legislators should therefore ensure that the price of an electronic communication service is the same regardless of whether the service is delivered domestically or whether it crosses a border and terminates in a different EU Member State. Telecom providers should only charge the justifiable and objective cost (plus reasonable profit margin) of a call or text message to a recipient customer in another Member State.

h. MVNOs challenges

Sipgate highlights that for MVNOs the situation is especially difficult. These companies use the mobile network of a host MNO to produce their mobile services. Typically, the host MNO charges them a price per minute for every call. Thus, the cost base for MVNOs is even higher than the termination or transit cost.

i. Issues with third countries

Liberty Globe is supportive of the intra-EU Communications Regulation and believes it has largely functioned well, enabling a level playing field across Europe. However, **Liberty Globe** has noticed potential anomalies in certain territories, likely a result of divergent regulatory practices at national level particularly in relation to refiling of domestic calls through third

countries e.g. anti-fraud, anti-nuisance calls. This has resulted in uncertainty around surcharging practices which appear prima facie to circumvent the caps put in place by the intra-EU Communications Regulation. **Liberty Globe** would urge BEREC and the Commission to examine third country refilling and to encourage a harmonised approach to enforcement by national regulators, particularly as regards the imposition of bona fide national measures which may have an effect on the application of surcharges.

j. Recommendations for Intra-EU Communications Regulation

BEUC recommends making Intra-EU communication rules to work for customer. The review of the intra-EU Communications rules is a key opportunity that EU legislators should not pass on to deliver a true single market for fixed and mobile telecommunications services, which works for both consumers and businesses.

In 2018, Regulation 2018/1971 (BEREC Regulation) amended Regulation 2015/2120 to introduce price caps for regulated intra-EU communications. In order to ensure consistent and effective protection of consumers on intra-EU communications, **BEUC** recommends these rules to be further amended to introduce key improvements.

The review should introduce regulatory obligations to put an end to retail surcharges for intra-EU communications. Operators should only be able to additionally charge relevant direct costs that are objectively justified and demonstrated. Appropriate safeguards should also be introduced: for instance, to ensure legal certainty and prevent abuses, the BEREC Guidelines on intra-EU communications could be updated to introduce clear guidelines on its general principles. Together with national regulatory authorities, the European Commission could also be tasked with additional competences to closely monitor the activities of telecom operators in this regard. At the very least, the proposal should introduce a principle of phasing-out of the retail price differences between electronic communications services terminating in the same Member State and those terminating in another Member State, to ensure that the price caps currently predicted are substantially reduced over time. Ultimately, the price caps on intra-EU communications should aim to reach the prices practiced for domestic communications.

PIIT presents the position of Polish mobile network operators. The market for international calls in Poland is characterised by an effective competition, which was confirmed by the NRA within the market analysis process. Additionally, the competitive pressure from other number independent electronic communication services is present on the market. Regulation of these services, introduced in 2019, added a new layer of consumer protection in a form of price caps. Therefore, **PIIT** is of the position that no further regulation in this regard is necessary and justified.

Any future measure applicable to these services should enable operators to recover costs associated with provision of those services and should not go beyond protective price caps. Extension of the rule applicable to regulated roaming services to intra-EU calls, as proposed by the IMCO Commission in the latest legislative process, would be especially harmful. In case



of the Polish telecommunications market, introduction of domestic charging mechanism for intra-EU international services would de facto enable the vast majority of customers to use these services in an unlimited way, under national tariff plans. Due to the fact that mobile retail prices are one of the lowest among EU, it would result in the inability to recover the costs of providing these services from the current monthly fees of the tariff plans.

Therefore, such regulation would pose a serious threat to the further functioning of such offers in Poland and investments carried out by telecommunications operators, both on the mobile and fixed markets in Poland. It would also open the door to harmful arbitrage and frauds.

PIIT would also like to draw attention to the fact that the introduction of RLAH in 2017 in roaming was conditional to entry into force provisions reducing wholesale rates, that is direct costs of provision of retail services. **PIIT** would like to point out that although voice termination is subject to the union-wide common wholesale rate, this is not the case for SMS termination. Moreover, the new rule was not implemented immediately, but it was also preceded by a transitory period during which the system allowing for the recovery of service provision costs was in place (RLAH+), and allowing for - at least - partial preparation for future regulation.

In addition, any provisions regulating this matter, if they are to be introduced, should not be of the retroactive character. Operators were not able to take into account the costs related to this type of services in business calculations preceding the creation of an offer for the subscriber. Current tariffs business cases were based on the assumption that costs of providing intra-EU calls will be recovered from Pay As You Go tariffs not from unlimited tariff plans.

PIIT only sees the following operational issues which might be discussed if works on changes to regulations start:

- Implement the same dates for price adjustment to changes to exchange rates as for Roaming Regulations;
- Implement conditions of adjustment to exchange rates which as proposed for roaming regulations - due to costs of implementation, adjustment to exchange rates should only take place in case when local currencies are depreciating and price adjustment should allow to maintain real value expressed in EUR and allow to compensate costs of implementation. In any case, adjustment of process to exchange rates should be treated as a change of conditions of service which results from implementation of Roaming Regulations.

MVNO Europe is of the opinion that this regulatory instrument should be repealed, and certainly wishes to caution against any suggestion that a reduction of the retail price caps determined by regulation could be given serious consideration.

ECTA is strongly of the view that any further intervention on retail prices for intra-EU communications cannot be justified on valid grounds. The Regulation should therefore logically expire as scheduled on 14 May 2024. As a second order position, **ECTA** considers that, if unavoidable, the Regulation could be left in place, but in that case it should be left unchanged. **ECTA** unequivocally rejects any notion that the Regulation could justifiably be amended, for instance in the form of conceivably prohibiting higher retail prices for intra-EU calls/SMS than the applicable domestic retail prices for calls/SMS, or be it in the form of a

reduction of the retail price caps contained in the Regulation. There is simply no basis in facts for this.

All **ECTA** members, despite the lingering effects of the COVID-19 pandemic, and despite the increasingly difficult economic context, new concerns about energy supply to telecommunications networks, and spiking inflation, continue to invest a significant proportion of their revenues and to work with all hands on deck to ensure the resilience and the full performance of their networks while bearing the associated costs.

With the EU's digital targets for 2030 politically agreed, it is clear that considerable further investment by ECNS operators will be required to achieve the 2030 connectivity objectives.

ECTA considers that the possible adoption of amendments to the Regulation on intra-EU communications would undermine operators' revenues at a time when they are already incurring higher costs. As a result, operators' investment capacities would be affected.

ECTA firmly and respectfully calls on BEREC to refrain in its Opinion from suggesting any possible amendments to the Regulation on intra-EU communications. There is no conceivable justification for amendments. In addition, restraint is necessary so as not to undermine the investment capabilities of ECNS operators, including **ECTA** members. **ECTA** represents those alternative operators who have helped overcome national monopolies to give EU citizens, businesses and public administrations quality and choice at affordable prices and continue to invest significant amounts of their revenues in very high capacity fixed, mobile and fixed wireless networks to provide their final customers with innovative and affordable offers.

Contributor indicates few clerical errors in regulation 2018/1971:

The clerical error refers to the case when a customer switches back from an opt out (deregulated) offer to a regulated one: **which offer components can change?**

Regarding this point apply Article 5a comma 4:

*"4. Consumers may switch from or back to the tariffs laid down in paragraph 1 [ndr: the regulated one] within one working day of receipt of the request by the provider, free of charge and providers shall ensure that such a switch does not entail conditions or restrictions with regard to elements of the subscriptions other than ~~regulated intra-EU~~ communications. **Contributor** believes that a clerical error occurred in the bold text above."*

Contributor also provides suggestion for the right version as it should be:

*"4. Consumers may switch from or back to the tariffs laid down in paragraph 1 [ndr: the regulated one] within one working day of receipt of the request by the provider, free of charge and providers shall ensure that such a switch does not entail conditions or restrictions with regard to elements of the subscriptions other than **international** communications".*

Such interpretation is endorsed by recital 47 and Article 5a comma 2:

*"(47) Providers of publicly available number-based interpersonal communications services should be able to propose to their consumers **alternative tariff offers** for **international***



communications with different rates for regulated intra-EU communications and consumers should be free to opt for such offers expressly, and to switch back any time and free of charge, even for offers to which consumers subscribed before the entry into force of such provisions. Only **alternative offers for international communications**, such as those covering all or some third countries, should, where accepted by a consumer, **be able to free a provider from its obligation not to exceed the caps for regulated intra-EU communications**. Other advantages, such as subsidised terminal equipment or discounts on other electronic communications services, offered by providers to consumers are a normal part of competitive interaction and should not affect the applicability of the price caps for regulated intra-EU communications”.

Contributor states that in the same way can be assumed as clerical errors even the occurrences of term “**regulated**” underlines in the text below:

"Article 5a Retail charges for regulated intra-EU communications

(2) Notwithstanding the obligations laid down in paragraph 1, providers of regulated intra-EU communications may additionally offer, and consumers may expressly choose, a tariff for **international communications including regulated intra-EU communications different from that set in accordance with paragraph 1**, by virtue of which consumers benefit from a different tariff for regulated intra-EU communications than they would have been accorded in the absence of such a choice. Before consumers choose such a different tariff, the provider of regulated intra-EU communications shall inform them of the nature of the advantages which would thereby be lost”.

Contributor believes that underlined text is a clerical errors also and they shall be eliminated.

Otherwise, any practical effect of the introduction of Opt-Out offers is vanished, as a matter of fact when a customer switches back, if an operator can change only regulated intra-EU communication it means that: a) it cannot modify the extra EU offer component (that has probably been reduced to promote the opt out offer subscription); b) it can only reduce the intra-EU component price (action already allowed being it a cap).

In the right interpretation changes to international communication preserved the legislator intention to avoid change in DOMESTIC offer, like in roaming regulation, and allow operator to “cross subsidise” intra-EU with extra EU communications, the genuine spirit of opt out offers.

Contributor expresses its view on Opt-Out back/forth ward clause. Regulation 2018/1971 (intra-EU related articles) prescribes that any change shall be performed in one day and free of charge, but unfortunately does not foresee a clause like the one in roaming regulation 2022/612 that allow operators to delay a switch “*until the previous roaming tariff has been effective for a minimum specified period not exceeding two months*“ in order to avoid opportunistic behaviours. **Contributor** promotes its adoption in the coming review of the regulation, as already noted in the BEREC guidelines where at the end of Guideline 21 is reported that “*BEREC expects switching between alternative and regulated tariffs to **occur in a proportionate manner***”.



Contributor also provides opinion on interrelation among Commission Delegated Regulation (EU) 2021/654 and EU regulation 2018/1971. Applicability of retail caps to metered offers to consumer customers shall be made coherent with provisions on Commission Delegated Regulation (EU) 2021/654 setting single maximum Union-wide values for termination rates on mobile and fixed networks. **Contributor** provides an example of such coherence relates to the countries where the two regulations are applicable. Commission Delegated Regulation (EU) 2021/654 applies to the 9 “outermost regions” of some EU countries²⁵.

At the same time the same regulation does not apply to the 13 “overseas countries and territories²⁶”. The same rules should therefore apply to the two regulations being the Commission Delegated Regulation (EU) 2021/654 a corner stone for the applicability of regulation on ITZ calls and SMS.

Contributor notes that applicability of regulation on ITZ calls and SMS to the EEA countries (Norway, Iceland, and Liechtenstein) should be conditionate to the applicability of regulation on MTR/FTR for the same countries.

Contributor informs that transit services used to circumvent regulation. While at domestic level applicability of regulated termination caps could be assumed fully respected, at international (EU) level there are some difficulties in paying termination rates below or equal to the caps introduced with Commission Delegated Regulation (EU) 2021/654.

The main obstacle raises by the objective difficulties to interconnect directly with all the EU mobile and fixed operators, having so to rely on transit operators that are NOT regulated.

Contributor states that some operators provide its own terminations only via a transit operator that, being not ruled by Commission Delegated Regulation (EU) 2021/654, applies termination rates higher than the regulated ones, de facto impeding application of the regulation at EU level.

In some cases, the reselling values are double or more than the regulated values. In some other cases few operators just disattend the provision of Commission Delegated Regulation (EU) 2021/654.

Contributor proposes BEREC to perform a detailed monitoring of activities aimed to circumvent Commission Delegated Regulation (EU) 2021/654 across Europe using, for example, the adoption, at exclusive level, of transit services.

*

²⁵ Martinique, Mayotte, Guadeloupe, French Guiana and Réunion (French overseas departments; Saint-Martin (French overseas community); Madeira and the Azores (Portuguese autonomous regions); Canary Islands (Spanish autonomous community).

²⁶ Aruba (NL), Bonaire (NL), Curaçao (NL), French Polynesia (FR), French Southern and Antarctic Territories (FR)*, Greenland (DK), New Caledonia (FR), Saba (NL), Saint Barthélemy (FR), Sint Eustatius (NL), Sint Maarten (NL), St. Pierre and Miquelon (FR), Wallis and Futuna Islands (FR).