

ANNEX – QUESTIONNAIRE TO BEREC ON COMMISSION IMPLEMENTING REGULATION (EU) 2016/2286

The new [Roaming Regulation \(EU\) 2022/612](#) requires the Commission to periodically review in light of market developments, after consulting BEREC, the implementing acts on the application of fair use policies and sustainability derogations (Art.7). It further defines criteria for adopting implementing acts (Art 7 (2) and (3)) and includes three recitals (Recital 28, 29 and 30) specifying with more details the aspects to be considered when reviewing its implementing acts.

Art. 7 (2) specifies that:

When adopting implementing acts laying down detailed rules on the application of fair use policies, the Commission shall take into account the following:

- (a) the evolution of pricing and consumption patterns in the Member States;*
- (b) the degree of convergence of domestic price levels across the Union;*
- (c) the travelling patterns in the Union;*
- (d) any observable risks of distortion of competition and investment incentives in domestic and visited markets.*

Art. 7 (3) specifies that:

The Commission shall base the implementing acts referred to in paragraph 1, points (b) and (c) on the following:

- a) the determination of the overall actual and projected costs of providing regulated retail roaming services by reference to the effective wholesale roaming charges for unbalanced traffic and a reasonable share of the joint and common costs necessary to provide regulated retail roaming services;*
- b) the determination of overall actual and projected revenues from the provision of regulated retail roaming services;*
- c) the consumption of regulated retail roaming services and the domestic consumption by the roaming provider's customers;*
- d) the level of competition, prices and revenues in the domestic market, and any observable risk that roaming at domestic retail prices would appreciably affect the evolution of such prices*

Recital 28 specifies that:

Roaming providers should be able to apply fair use policies to the consumption of regulated retail roaming services provided at the applicable domestic retail price. Fair use policies should only address the abusive or anomalous usage of regulated retail roaming services by roaming customers, such as the use of such services by roaming customers in a Member State other than that of their domestic provider for purposes other than periodic travel. Implementing measures on the application of fair use policies should ensure that this objective is not circumvented by roaming providers to pursue other purposes to the detriment of roaming customers engaged in any form of periodic travel. In cases of force majeure caused by circumstances such as pandemics, temporary border closures or natural

disasters, which involuntarily extend the period of temporary stay of the roaming customer in another Member State, roaming providers should extend the applicable fair use allowance for an appropriate period upon a justified request by the roaming customer. Any fair use policy should enable the roaming provider's customers to consume volumes of regulated retail roaming services at the applicable domestic retail price that are consistent with their respective tariff plans. Implementing measures on the application of fair use policies should take into account the many and varied patterns of periodic travel by roaming customers, in order to ensure that fair use policies do not act as a barrier to a genuine RLAH experience on the part of such customers.

Recital 29 specifies that:

When reviewing its implementing acts the Commission, after consulting BEREC, should assess the extent to which market conditions, consumption and travel patterns, the evolution and convergence of pricing and the observable risk of distortion of competition would allow for a sustainable provision of roaming services at domestic prices for periodic travel and the possibility of limiting the application and effects of the measures under a fair use policy to exceptional cases.

Recital 30 specifies that:

In specific and exceptional circumstances where a roaming provider is not able to recover its overall actual and projected costs of providing regulated retail roaming services from its overall actual and projected revenues from the provision of such services, that roaming provider should be able to apply for authorisation to apply a surcharge with a view to ensuring the sustainability of its domestic charging model. The assessment of the sustainability of the domestic charging model should be based on relevant objective factors specific to the roaming provider, including objective variations between roaming providers in the Member State concerned and the level of domestic prices and revenues. That may, for example, be the case for flat-rate domestic retail models of operators with significant negative traffic imbalances, where the implicit domestic unit price is low and the operator's overall revenues are also low relative to the roaming cost burden, or where the implicit unit price is low and actual or projected roaming services consumption is high. In order to avoid the domestic charging model of roaming providers being rendered unsustainable by such cost recovery problems, generating a risk of an appreciable effect on the evolution of domestic prices or so-called 'waterbed effect', roaming providers, upon authorisation by the national regulatory authority, should, in such circumstances, be able to apply a surcharge to regulated retail roaming services only to the extent necessary to recover all relevant costs of providing such services.

This lead to the following questions which BEREC should give an opinion on:

Questions for BEREC opinion on the review of the [Commission Implementing Regulation \(EU\) 2016/2286](#):

A) Overall performance of the FUP and derogation rules

What has been the overall general performance of the FUP and derogation rules in relation to the key evaluation criteria (i.e. effectiveness, efficiency, coherence)

1. *In BEREC's view, to what extent has the FUP and derogation implementing rules achieved its objectives indicated in Art.5 and art.6 of:*
 - a) preventing abusive or anomalous usage of regulated retail roaming services by roaming customers, such as the use of such services by roaming customers in a Member State other than that of their domestic provider for purposes other than periodic travel?
 - b) enabling the roaming provider's customers to consume volumes of regulated retail roaming services at the applicable domestic retail price that are consistent with their respective tariff plans?
 - c) ensuring the sustainability of its domestic charging model?
2. *Would BEREC consider the FUP and derogation rules relevant and coherent with the Roaming Regulation and the overall telecom regulatory framework?*
3. *How would BEREC assess the effectiveness for operators of FUP measures?*
 - a) Please add an assessment per category (Residence/ stable link criterion, 4 month window, open data bundle limits, pre-paid limits and other control mechanism)
 - b) Has FUP prevented sustainability problems for operators (number of derogations, no market exit etc.)?
4. *How would BEREC assess the effects for consumers of FUP measures?*
 - a) Have consumers been able to benefit from sufficient data at RLAH conditions while periodically travelling?
 - b) Have the rules ensured harmonized and coherent implementation of fair use policies that roaming providers might apply to consumers?
 - c) Have the consumers been properly informed about the rules and rights? (complaints on application of the transparency rules, complaints regarding lack of information, and possible indications from NRA supervisions)
 - d) Do the consumers have a sufficient understanding of the FUP and derogation rules?
 - e) Have NRAs conducted any supervision/monitoring of the transparency obligations related to the automatic messages, i.e. whether operators inform customers by way of automatic message and whether the automatic message includes all the information required by the Roaming Regulation?
 - f) To what extent have operators applied the residence and stable link requirement and how effective/efficient has it been to ensure fair usage of regulated roaming services?

- g) Has FUP had any positive or negative effects on consumption of regulated roaming services?
 - h) Are the open data bundle limits sufficient to cover also the consumption of the category of users that have above average data usage?
 - i) How would BEREC assess the number of consumers affected by the application of FUP in terms of hitting the limits and paying surcharges - Are the effects of the measures under a fair use policy limited to exceptional cases (see Recital 29)?
5. To what extent has the implementation of Fair Use Policy rules detailed in the Roaming Regulation and in the Implementing Regulation been supervised by NRAs (Art. 11a)? What have been the findings of any formal or informal supervision/monitoring?
6. *Functioning of the Derogation mechanism and its effectiveness for operators and consumers:*
- a) How many requests for derogations since i) the introduction of the RLAH rules, ii) per year have the NRAs received from the MNOs and MVNOs ?
 - b) How many operators (MNOs and MVNOs indicated separately) have been authorised to apply a surcharge on regulated roaming services (indicate separately authorisation and renewals), due to having a negative mobile services margin and a negative roaming retail net margin?
 - c) Is the mechanism and the methodology for assessing possibilities of derogations to the abolition of retail roaming charges provided by the regulation and the implementing act working effectively to ensure the sustainability of the roaming market?
 - d) Has the NRA based the assessment of the sustainability of the domestic charging model on relevant objective factors specific to the roaming provider, including objective variations between roaming providers in the Member State concerned and the level of domestic prices and revenues?
 - e) To what extent have the roaming providers, applied a surcharge to regulated retail roaming services only to the extent necessary to recover all relevant costs of providing such services? Are there cases where roaming providers did not apply a surcharge even when they were granted a derogation?
 - f) How efficient has the application of the derogation mechanism been to prevent the evolution of domestic prices or so-called 'waterbed effect'?
 - g) In the applications leading to authorisation of surcharges, what are the negative roaming margins as informed by operators when requesting the derogation / the extent of the negative roaming margins recognised in NRAs decisions to authorise surcharges and what are the arrangement concerning the surcharge declared in the applications for authorisations (see art. 11 c of the Commission Implementing Regulation)
 - h) Does BEREC consider the 3% (art.10) limit for the negative roaming margin as a limit that worked appropriately considering the sustainability objectives of the derogations?
7. *How would BEREC assess the efficiency (cost-benefit relation) of the FUP and derogation rules, as regards the administrative and regulatory costs (a) borne by the NRAs and (b)*

borne by the operators (taking also into consideration the input received in the monitoring exercise)?

- a) What is the cost of implementing/monitoring FUP?
- b) What is the cost for operators of requesting derogations?
- c) How many requests for derogations does the NRAs receive yearly?
- d) What is the cost for NRAs of assessing derogations?

B) Forward looking questions:

1. Has BEREC identified any part of the FUP and derogation rules as defined in the Implementing regulation where there is room for improvement in terms of simplification, elimination of regulatory burden or reduction of associated costs?
2. The co-legislators indicated (see Recital 29) the need to assess if considering market conditions, consumption and travel patterns, the evolution and convergence of pricing and the observable risk of distortion of competition, these indicators would allow for a possibility of further limiting the application and effects of the measures under a fair use policy to exceptional cases still enabling the sustainable provision of roaming services at domestic prices for periodic travel.
 - a) Is the evolution of the pricing for mobile communications converging or is the price gap difference between the Member States still significant?
 - b) What is the observable risk of distortion of competition according to BEREC?
 - c) Have there been consumer complaints or other elements indicating that travel patterns would not be sufficiently covered by the RLAH rules?
 - d) Do the FUP rules sufficiently address different forms of travel patterns and cross-border consumers (e.g. cross-border workers, digital nomads, Erasmus students)?
3. What kind of alternative measure could BEREC propose for further limiting the application and effects of the measures under a fair use policy to exceptional cases? What could be the expected impacts of these alternative measures on the sustainability of operators to provide regulated roaming services and the expected impacts on consumers?