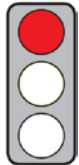


KEY ISSUES

Objective of the Regulation: The Commission wants to create an EU single market for electronic communications.

Affected parties: Roaming providers, regulatory authorities, land-line operators and end-users.

Pro: –



Contra: (1) The aim of achieving the same retail prices for domestic and roaming services is uneconomic because it is unrealistic to assume that wholesale prices for roaming and domestic services are identical.

(2) The abolition of the retail charge for incoming roaming calls results in a redistribution in favour of network operators in countries with high termination charges and network operators in holiday countries.

(3) Price equality between domestic and foreign land-line calls is misguided because telecommunications companies will have to cross-subsidise foreign connections by way of higher prices in other business sectors.

(4) The proposed bans on retail roaming charges for incoming calls and on higher prices for land-line calls to other EU countries than for domestic land-line calls are in violation of the basic freedom to conduct a business.

CONTENT

Title

Proposal COM(2013) 627 for a **Regulation** of 11 September 2013 of the European Parliament and of the Council laying down **measures concerning the European single market for electronic communications and to achieve a Connected Continent**, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No 1211/2009 and (EU) No 531/2012

Brief Summary

[Part 1](#) of the cepPolicyBrief deals with net neutrality and the rights of end-users. [Part 2](#) deals with the EU-wide notification requirements for telecomms providers, radio spectrum and harmonised virtual broadband access products. Part 3, herein considered, deals with the rules on roaming and cross-border connections within the EU.

Article numbers without reference to a statute are those contained in the Roaming Regulation (EU) 531/2012.

► Objective of the Regulation

- The objective is the "completion of a European single market for electronic communications" [COM(2013) 627, Art. 1 (1)]. For this purpose, the Commission wants, inter alia,
 - to create incentives for roaming and domestic mobile telephone services to be offered at the same price, and
 - to prescribe that land-line calls to other EU countries will not cost more than domestic calls.
- The Regulation amends the Roaming Regulation [(EU) 531/2012] [Art. 37 COM(2013) 627]. The latter provides, in particular, for (see [cepPolicyBrief](#)):
 - regulated price caps on roaming services both at the wholesale - between telecomms providers - and at the retail level (Art. 7 to 10),
 - the obligation on all roaming providers to allow their retail customers to gain access and to change over to alternative roaming providers as from 1 July 2014 ("Decoupling") (Art. 4).

► Definitions

- "Roaming" is the use of a mobile telephone or other device providing mobile communications services - calls, SMS messaging or data services - whilst abroad within the EU (Art. 2 (2) (f)).
- "Domestic provider" means an undertaking that provides end-customers with mobile communications services in their own country (Art. 2 (2) (b)).
- "Roaming provider" means an undertaking that operates as a domestic provider and provides its end-customers with telephone, messaging and data services when they are abroad (Art. 2 (2) (a)).
- "Alternative roaming provider" means an undertaking that also offers roaming services in competition with the respective domestic provider (Art. 2 (2) (c)).

- "Roaming Agreements" are agreements between domestic and foreign network operators. The conclusion of such roaming agreements allows the domestic provider to offer its end-customers "sustainable" roaming services at domestic prices (new Art. 2 (2) (r)).
- ▶ **Release from regulated price caps and decoupling**
 - Roaming providers are given a right to choose: If they offer the same prices for domestic and roaming services in all Member States and all tariffs, they do not have to
 - comply with price caps on retail charges (new Art. 4a (4), sub-paragraph 1)
 - or allow decoupling for their customers who are abroad within the EU (new Art. 4 (7) in conjunction with new Art. 4a (1)).
 - Roaming providers can limit consumption of roaming services at domestic prices to "reasonable use". The Body of European Regulators for Electronic Communications (BEREC) lays down guidelines on the application of "reasonable use" criteria for roaming services. (new Art. 4a (2))
 - Roaming providers must inform end-users as soon as they have reached their "reasonable use" limit for roaming services (new Art. 4a (2)). Where the "reasonable use" limit is exceeded, the regulated price caps apply (new Art. 4a (4)). 2).
 - End-users can waive their right to use roaming services at domestic prices if roaming providers offer them "other advantages" in return. The national regulatory authorities monitor whether roaming providers are using business practices which result in the avoidance of this rule. (new Art. 4a (3))
- ▶ **Interim provision for release from regulated price caps and decoupling**
 - From 1 July 2014 to 30 June 2016, roaming providers that do not offer the same prices for domestic and roaming services in all Member States and all tariffs have recourse to an interim provision. They are also released from the price caps and the decoupling obligation if they meet certain requirements. (new Art. 4a (6) and (7))
 - Requirements from 1 July 2014 to 30 June 2015
 - They offer the same prices for domestic and roaming services in at least 17 Member States with at least 70% of the EU population, in at least one tariff (new Art. 4a (6) (c)); or
 - they offer the same prices for domestic and roaming services in at least 10 Member States with at least 30% of the EU population, in all tariffs (new Art. 4a (7) (b)).
 - Requirements from 1 July 2015 to 30 June 2016
 - They offer the same prices for domestic and roaming services in at least 17 Member States with at least 70 % of the EU population, in tariffs used by at least 50% of their customers (new Art. 4a (6) (d)); or
 - they offer the same prices for domestic and roaming services in at least 14 Member States with at least 50 % of the EU population, in all tariffs (new Art. 4a (7) (c)); or
 - they halve their roaming charges based on those applicable on 1 January 2015 (new Art. 4a (6) (e), sub-paragraph 1).
 - Requirements from 1 July 2016 to 30 June 2018
 - Basically, roaming providers who have made use of the interim provision have to maintain this price equality at least until 1 July 2018 (new Art. 4a (6) (e), sub-paragraph 1 and (7) (d), sub-paragraph 1).
 - By way of an exception, they can also be released from the price caps and from the decoupling obligation after 1 July 2016 if they (new Art. 4a (9))
 - offer the same prices for domestic and roaming services in at least 17 Member States with at least 70 % of the EU population, in all tariffs and
 - do not yet have the necessary roaming agreements in the other Member States but demonstrate that they are seeking "in good faith" to establish "fair and reasonable" roaming agreements in these Member States.
- ▶ **New price caps for retail tariffs**
 - As from 1 July 2014, at retail level, roaming calls will be subject to (amended Art. 8 (2) in conjunction with Art. 40 COM(2013) 627)
 - a maximum price of 0.19 euro/min. for outgoing calls (as already stipulated in the Roaming Regulation),
 - a maximum price of 0 euro for incoming calls.
 - As from 1 July 2016 [Art. 21 (3) in conjunction with Art. 40 COM(2013) 627]
 - land-line calls from one Member State to another cannot cost more than long-distance domestic land-line calls,
 - the price caps in the Roaming Regulation will apply to mobile calls and SMS messages from the home country to another EU country (see [cepPolicyBrief](#)).

Statement on Subsidiarity by the Commission

The focus of the proposal is to "establish a single market for electronic communications" which, according to the Commission, can only be achieved at EU level. The Commission does not provide a separate statement on subsidiarity for the individual areas of regulation.

Policy Context

With Regulations (EC) No. 717/2007, (EC) No. 544/2009 and (EC) No. 531/2012, the EU has, since 2007, been following the policy goal of gradually reducing or even abolishing the - in its view - excessive roaming charges, by way of mandatory price caps and decoupling obligations.

Legislative Procedure

11 September 2013	Adoption by the Commission
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Directorates General:	DG Connect
Leading Committee of the EP:	Industry, Research and Energy, Rapporteur: Pilar del Castillo Vera (EVP, ES)
Leading Federal Ministry:	TBA
Leading Committee of the BT:	TBA
Decision-making mode in the Council:	Qualified majority (Adoption by a majority of the Member States and with 260 of 352 votes; Germany: 29 votes)

Formalities

Legislative competence:	Art. 114 TFEU (Internal Market)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Legislative procedure:	Art. 294 TFEU (Ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

Decoupling, which under the existing legislation will be mandatory from 1 July 2014, promotes competition on the roaming market because there is currently a margin between the roaming wholesale price, which alternative providers must pay to the established roaming providers, and the roaming retail price. This margin is an incentive for alternative providers to enter the market and will lead to a reduction in the retail price for roaming. Even with decoupling, however, these prices will not fall to the same level as retail prices for domestic services. This is due to the wholesale prices for roaming which are likely to remain higher than the wholesale prices for domestic services.

The Commission is obviously not satisfied with this - price-reducing but not price-levelling - process. With this hastily drafted teaser offering a release from decoupling in return for price equality between domestic and roaming services, however, the Commission is discrediting its own decoupling idea. It makes market entry by alternative roaming providers less likely because fewer potential customers are available.

The Commission's policy-driven aim of achieving the same retail prices for roaming and domestic services is also arbitrary and uneconomic because the Commission's assumption that the roaming agreements which it is imposing will lead to identical wholesale prices for roaming and domestic services, is unrealistic. Thus, mobile network operators can only achieve price equality between domestic and roaming services at the retail level if they cross subsidise domestic and roaming services. This is uneconomic because prices will no longer correspond to the costs.

The proposed abolition of the retail charge for incoming roaming calls intensifies this problem particularly for those providers who do not have their own networks abroad because, for the termination of each roaming call abroad, these providers have to pay a termination charge to the foreign network operator but can no longer pass this on to their own customers. Since, on the one hand, this termination charge differs from one Member State to another and, on the other hand, there is, especially during holiday periods, a North-South divide, abolition of the charge for incoming calls **will lead to a redistribution in favour of the network operators in countries with high termination charges and those in holiday destinations.**

The proposed price equality of land-line calls is misguided. In the case of national land-line calls, significantly fewer result in termination in a foreign network than is the case for cross-border calls. The costs of a national call are therefore lower on average. Another reason for rejecting price equality is that termination charges differ between Member States. Telecommunications undertakings will have to cross subsidise foreign connections by way of higher prices in other business sectors.

Legal Assessment

Legislative Competency

The Regulation is correctly based on the competence to adopt measures for the approximation of the provisions in the internal market (Art. 114 TFEU). Whether the Roaming Regulation, which is to be amended, can itself be based on the internal market competence, has long been the subject of controversy (see [cepOpinion](#)). In 2010, however, the ECJ affirmed this question (ECJ, Case C-58/08 of 8 June 2010).

Proportionality

The Commission's aim of achieving standard prices across the EU for domestic and roaming services is best achieved - notwithstanding the economic concerns - by way of a Regulation.

Compatibility with EU Law in other Respects

The existing price caps on roaming charges are not proportional (see [cepPolicyBrief](#) and [cepOpinion](#)) and therefore in violation of the basic freedom to conduct a business [Art. 16 Charter of Fundamental Rights of the EU (CFREU)].

The proposed bans on retail roaming charges for incoming calls, and on higher prices for land-line calls to another country within the EU than for domestic land-line calls, also violate the freedom to conduct a business (Art. 16 CFREU) as they constitute unjustified intervention in the scope of protection. The aim of these bans is to standardise domestic and foreign tariffs. The bans are appropriate for achieving this aim. They are also necessary because there is no indication of an equally effective but less stringent measure. They are, however, disproportionate because they place an excessive burden on the providers due to the fact that they are often unable to cover their costs on the services affected. At the same time, it is unclear what advantages the desired price equality will have other than providing cost savings for a small number of customers.

Conclusion

The aim of achieving the same retail prices for domestic and roaming services is uneconomic because it is unrealistic to assume that wholesale prices for roaming and domestic services are identical. The abolition of the retail charge for incoming roaming calls results in a redistribution in favour of network operators in countries with high termination charges and network operators in holiday countries. Price equality of land-line calls will result in telecommunications companies having to cross-subsidise foreign connections by way of higher prices in other business sectors. The proposed bans on retail roaming charges for incoming calls and on higher prices for land-line calls to other EU countries than for domestic land-line calls are in violation of the basic freedom to conduct a business.