



ETNO POSITION PAPER

ETNO's comments on the EC proposal on the review of roaming regulation



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The main objective pursued by the EC when reviewing current Roaming regulation is to assess whether the retail roaming market within the EU (RLAH) **is working properly** and whether since 2014 the market has experienced any material changes that are not properly reflected or tackled through current framework and accordingly the need for an update of such framework.

According to diverse reports from the EC and BEREC, it seems that the RLAH regulation in force is working well. The EC proposal is based on a cost modelling not taking into account the ongoing 5G transformation, the traffic patterns and investment needs. Moreover, the 'quality of service (QoS)' obligations beyond existing transparency rules are not fit for purpose. In addition, the impact of the COVID crisis is not adequately considered across a number of dimensions, such as the impact on supply chains or deployment planning, volumes, ...

- **QoS: no need for further obligation**

In ETNO's view, the market is currently working properly and there are no major concerns neither for residential customers nor for businesses as reflected by the fact that the number of complaints on roaming in the EU has not increased in most Member States following the introduction of RLAH, which puts in question the need and proportionality of further obligations.

We have to bear in mind the absence of a consensus of what QoS might be at EU level and that such considerations will be closely tight to service availability and technological evolution, and accordingly aiming to regulate QoS at this point in time would create uncertainties and inconsistencies for the ongoing 5G rollout. There is an inevitable challenge with a QoS discussion in a roaming scenario: every MNO looking to provide (let alone guarantee) a certain level of QoS in roaming is limited by all network and service elements controlled and delivered by other players, particularly the visited network but also voice carriers and signalling providers. Any attempt to harmonise QoS across the board would be disproportionate and difficult to sustain in a context of a market with no major concerns related to the quality of the roaming services.

ETNO concludes that the texts in the recital and articles in relation to QoS are unclear both in scope and in wording. Various quality aspects seem to be included for which the proposals in Article 5 and 9 are not realistic or even problematic:

- **Material burdens to guarantee that the provision of the services abroad under the same conditions as locally:** there are variations in coverage and (e.g.) available speeds, between countries and networks. Bearing in mind that quality in roaming is driven by the visited network, it will therefore not be possible to offer the same user experience in other countries, on all networks. Quality moreover is a complex given and combination of many possible parameters. Experience shows it is already difficult to approximately assess and compare quality of service for networks in one Member

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State, let alone it would be practically possible to establish and disclose detailed information on the quality for all networks in all EU / EEA countries. Furthermore, roaming calls make use of international networks that intrinsically increase latency and potentially decrease the bandwidth. Therefore, the Regulation should not include this aspect of QoS.

Such quality differences cannot be remedied by regulation and regulation should not force operators to only offer roaming on comparable networks – if available at all – or even to interfere in the QoS of roaming partner networks.

- For ETNO, it is really necessary to get assurance that these QoS provisions **do not imply that operators would be forced to upgrade all wholesale roaming agreements to the latest technology available in the home country**, or that operators would be forced to steer customers to “best” available network at all times (as opposed to the preferential net with the best commercial terms). If the set of possible partners is narrowed down by strict requirements to meet a regulatory imposed service quality at a certain point of time, there would be less options available, damaging cost efficiency and competition at wholesale level.
- In the impact assessment, the Commission identifies the ‘problem’ that some home providers do not offer the same ‘generation of technology’ in all countries and on all networks. If we understand that operators shall not voluntary/artificially reduce the access of the available technology, ETNO questions whether exceptions from this have ever been caused by commercial decision or technical measures. **To mandate that all technologies should be supported by all networks in all countries when it is ‘technically feasible’ is disproportionate because it legally requires disruptive adjustments to network planning and commercial strategy.** The roll-out of new technology simply occurs in phases and even if the technology itself is available, there may be legitimate reasons for not making it (immediately) available on all networks. Opening new technologies requires operational and commercial activities that require implementation times and may be disproportionate on all networks. E.g. it would be a perverse stimulus of the regulation if it were commercially more attractive to end roaming with a network, but not to keep it alive with more limited services, as a backup for other existing roaming partner networks. The proposal leaves no room for the necessary phased introduction of new services and technologies, which will be problematic in the future roll-out of 5G and associated functionalities. The ability to gradually launch new technologies serves multiple important purposes such as proper testing and the exploration of innovative offerings. In this context it should also be noted that in practice, visited operators do not have an incentive to limit access to new technologies, but do have a need in view of investment and innovation to extract value from new deployments.
- **Material problems for future service provision:** The same applies to the availability of all services offered nationally. In the past, this only concerned circuit-switched speech, SMS and (basic) data access. In the future - based on 5G technology - a range of new services will potentially be developed. **It will not be possible for these services to be used (immediately) on other networks.** Especially with new services, standardization is not immediately sufficient to directly enter into roaming relationships (let alone with all networks). The proposal does not acknowledge that the roll-out of new services will be gradual and first tested on a limited scale (first on the own network of an operator, then with a few selected roaming partners). **According to the text of the proposal, this**

should not be allowed, because if the ‘technical possibility’ is given, roaming should be immediately available everywhere. This will not only be a huge restriction on innovation but also undercut sustainability of providing new services. A service that could only be offered nationally once the roaming option was implemented with (all?) networks that support that service simply does not make commercial sense, especially with the introduction of new services and functionalities via the new 5G networks. To avoid stifling of innovation and economic viability, the proposed strict text should not be applied to services.

Finally, although ETNO supports proportionate **transparency measures** for end-customers concerning the availability of technologies and type of services while roaming in the EU/EEA, the proposed QoS provisions have a large margin for interpretation and therefore the implementation will be dependent on the NRA criteria and pose material uncertainties.. ETNO maintains that the Regulation **should limit the obligation to generic information on relevant factors** that can affect the quality of service, such as availability of certain technologies, coverage or variation due to external factors such as topography, as foreseen by recital 35 of the proposal, which should by all norms be deemed sufficient to inform the customer in this context.

We therefore propose the following amendments:

OLD	AMENDMENT
<p><i>Art 5. Paragraph 2.</i></p> <p><i>Roaming providers shall ensure, when technically feasible, that regulated retail roaming services are provided under the same conditions as if such services were consumed domestically, in particular in terms of quality of service</i></p>	<p>Art 5. Paragraph 2.</p> <p>Roaming providers shall ensure, when technically feasible, that regulated retail roaming services are provided under the same conditions as if such services were consumed domestically, in particular in terms of quality of service</p>
<p><i>Art. 9. Paragraph 3.</i></p> <p><i>Roaming providers shall ensure that a contract which includes any type of regulated retail roaming service specifies the main characteristics of that regulated retail roaming service provided, including in particular:</i></p> <p><i>(...)</i></p> <p><i>(c) the quality of service that can reasonably be expected when roaming in the Union</i></p>	<p><i>Art. 9. Paragraph 3.</i></p> <p><i>Roaming providers shall ensure that a contract which includes any type of regulated retail roaming service specifies the main characteristics of that regulated retail roaming service provided, including in particular:</i></p> <p><i>(...)</i></p> <p>(c) the quality of service that can reasonably be expected when roaming in the Union</p>

- **Emergency Services (112)**

ETNO's position remains that there is no need for additional obligation in respect to Emergency services. The proposed measures could be quite complex to implement (to provide localization of end-users, to provide info about the visited country...), even confusing (if several numbers in a given Member State..) for the end-users.

For end-users with disabilities, connectivity providers are dependent on the national emergency solutions supported by the PSAPs present in each single Member States. This calls for a minimum harmonisation of available solutions or functionalities to be supported by PSAPs in all EU Member States when it comes to ensuring equivalence of access to emergency services for end users with disabilities.

When dealing with the desired harmonized solution a cost-benefit analysis might be performed in order to propose feasible solutions with proportional implementation costs and being aware that very likely device evolution make lagging behind regulated provisions. It is important also to note that the organization of emergency services is a responsibility of Member States and accordingly it should be guaranteed that the roaming Regulation will not transfer the responsibility of organizing PSAPs to telecom operators.

An identification of potential solutions could be further built on the mapping already done in the EC's Working Document "Implementation of the single European emergency number 112" in 2019.

The rules on emergency services should be defined in a harmonised way and in such a way that it remains manageable and has a positive cost benefit. In any case, the proposal should be limited to harmonised solutions at European level i.e. access emergency services via 112 at this moment. The access to 112 should cover most requests in roaming. Going beyond this would potentially have a negative effect on the intention to promote the use of 112 in Europe.

With regard to new provisions on the gratuity of the transmission of caller location information at wholesale level, it should be noted that different solutions are being implemented across Member States as regard handset-derived caller location information. Therefore, at least as long as EC delegated acts to ensure compatibility and interoperability of emergency communications in the Union with regard to caller location information solutions have been adopted and implemented, the obligations should be limited to network-based location information.

Furthermore, the current Article 14 requires providers to send a message to end-users at border crossing, which includes information on the availability of the 112 emergency number. This Article 14 provides that end-users can opt-out of such messages ('opt-out'). In the proposed amended regulation, the obligation regarding the indication of emergency numbers has been removed from Article 14 and included in a separate Article 16, without the possibility of an 'opt-out'. In any case, this means, operationally, that the messages must be split and that customers who have not indicated that they have not opted out of the messages will receive two messages at each border crossing. ETNO assumes that this will not lead to an increased attention value but will increase annoyance. Insufficient grounds have been indicated by the Commission for this adjustment and no attention has been paid to the necessary operational adjustments (e.g. there is not even an implementation period foreseen). We believe this is an unnecessary and disproportional piece of the proposal and oppose to it.

Finally, we understand the rationale for informing the end-user about the provision of emergency services in the visited country, cf. the proposed Art. 16. However, taking into consideration that the term emergency communication services is expanded in the Code, and may be further expanded in the future, keeping a continuously updated list on these services to be informed to end-users would become a very cumbersome process. One could question the proportionality of this. Should this nevertheless be the interpretation to give to the legislation, ETNO calls upon the legislator to ensure that such a list is kept up to date in an harmonised way, e.g. by BEREC. Operators should be allowed to simply rely on that, use it as reference and possibly link to it.

- **VAS**

ETNO considers that the current proposed provisions on VAS will be quite difficult to implement and are unlikely capable to solve the problem of fraud. Increasing transparency for end-customers or allowing a VAS database could be a step forward and help to identify potential problem sources, but it still lacks specific measures aiming to limit fraud when roaming for this type of services

Therefore, until the introduction of further measures aiming at tackling the usage of geographical numbers to provide VAS, some additional options (e.g. opt-in approach, possible selective VAS blocking by operators) could also be advisable.

While we understand the rationale for increased transparency for roaming customers, cf. the proposed Art. 14(1), the proposed measures on transparency for **VAS** for end-users will be difficult to implement. To allow up-to-date and uniform information, this should be coordinated and organised at European level, either by the Commission or BEREC, by centralising all relevant information on a dedicated webpage accessible to end-users. We support the development of a BEREC database of all EU VAS, cf. the proposed Art. 17, which could serve as a starting point, and the reporting to this database must be handled in an appropriate administrative approach which does not add unnecessary cost or need for resources for operators. However, ETNO worries on the divergent timelines regarding entry into force of these transparency requirements being 30 June 2022 whereas the BEREC database should only be available by December 31st 2023. Ultimately, ETNO calls for streamlined entry into force in this context.

ETNO finds it worrisome and particularly difficult to communicate in an easily understandable and cohesive way to end-users (e.g. by welcome SMS) with the required tailored information. A solution could be that it is allowed for operators to link to the BEREC database with the updated and necessary information about services in the visited country, and let the operator to find the most suitable way to transmit the information. This would also be an efficient way of proceeding.

Even then, the information should be considered indicative (e.g. certain premium numbers in the database may not be accessible in roaming, etc.).

- **M2M in permanent roaming: to be kept outside of the Regulation**

ETNO is of the opinion that the EC proposal does not provide the necessary flexibility for new business models to define tariffs and to negotiate permanent roaming conditions both at wholesale and at retail level; in a market that is still in a very early stage of development but already facing competition from actors from outside the ECS sphere.

In order to assess the need whether M2M/IoT services might fall or not under the RLAH regulation, we urge to consider the fundamentally different nature of IoT/M2M from traditional voice and data services and support any future policy developments based on equal services and technological neutrality. Despite the fact that traditional voice, SMS and data roaming services are associated to temporary use when travelling, M2M profile is completely different and volume-based caps as already regulated in the RLAH, seems not to be a suitable option to facilitate such services thriving. The potential economic impact of IoT is promising to be substantial and far beyond the connectivity market: from improving productivity, to reducing public administration costs in deploying public services, monitoring and reducing pollution, to improving and facilitating the delivery of public services.

In addition, we should bear in mind the implications from a future-looking perspective that the application of RLAH principles to IoT/M2M users in permanent roaming could have. It would in practice grant non-EU providers preferential access to EU markets, without reciprocity for EU providers on non-EU markets.

IoT/M2M business has worldwide dimensions and competition that is still there with various actors providing products from connectivity to end to end solution will also be exerted by non-EU international providers coming from different sectors than the telecom one. This would create imbalances that might also undermine the 5G business case. If one of the main advantages 5G will bring is a suitable technological scope that will permit IoT to properly outburst, regulatory imbalances like the application of RLAH, might derail the prospects of European Sector leadership.

Today, IoT and M2M based devices and solutions may use connectivity solutions provided by mobile network operators. However, such a view ignores the fact that IoT connectivity can be provided beyond traditional ECS services including commercial networks in unlicensed solutions spectrum (Sigfox etc.) or private networks for example WiFi, Bluetooth, Zigbee. In addition to this, IoT architectures can also combine different types of connectivity solutions such as short range unlicensed and Wide Area Connectivity solutions for many devices for the same service. (e.g. Smart home, Connected Cars). Therefore, a potential impact assessment will have to consider adjacent markets and players in the IoT/M2M environment, and not just limit it to providers of traditional ECS services.

We believe that **machine-to-machine should remain outside the scope of the regulation. We firmly advocate that EU legislators should instead be looking at how to alleviate the challenges that our members experience during the deployment of enterprise and consumer IoT applications.**

We therefore propose to amend recital (21) as follows:

OLD	NEW
(21) In order to allow for the development of more efficient, integrated and competitive markets for roaming services, when negotiating wholesale roaming access for the purpose of providing retail roaming services, operators should be given the possibility <input checked="" type="checkbox"/> to negotiate innovative wholesale pricing schemes which are	(21) In order to allow for the development of more efficient, integrated and competitive markets for roaming services, when negotiating wholesale roaming access for the purpose of providing retail roaming services, operators should be given the possibility <input checked="" type="checkbox"/> to negotiate innovative wholesale pricing schemes which are

<p>not directly linked to volumes actually consumed, such as flat payments, upfront commitments or capacity-based contracts, or pricing schemes that reflect variations of demand across the year. ☐ Machine-to-machine communications, referred to in recital 249 of Directive (EU) 2018/1972, are not excluded from the scope of this Regulation and the relevant wholesale roaming access obligations. However, agreements on permanent roaming are subject to commercial negotiations and can be agreed by two roaming partners in the wholesale roaming contract. In order to allow the development of more efficient and competitive markets for machine-to-machine communications, it is expected that operators will increasingly respond to and accept all reasonable requests for roaming agreements on reasonable terms and explicitly allowing permanent roaming for machine-to-machine. They should be able to establish flexible roaming agreements enabling wholesale roaming services and to apply tariff schemes which are not based on the volume of consumed data but on alternative schemes, for example on the number of connected machines per month. In that context, in the event of a cross-border dispute, the parties involved should have recourse to the dispute resolution procedure laid down in Article 27 of Directive (EU) 2018/1972. ☐ The negotiating parties should therefore have the option of agreeing not to apply maximum regulated wholesale roaming charges for the duration of wholesale roaming agreements. This ☐ That ☐ would exclude the possibility for either party to subsequently request the application of volume based maximum wholesale charges to actual consumption, as set out in ☐ this ☐ Regulation (EU) No 531/2012. This alternative should be without prejudice to obligations as regards the</p>	<p>not directly linked to volumes actually consumed, such as flat payments, upfront commitments or capacity-based contracts, or pricing schemes that reflect variations of demand across the year. ⇒ Machine-to-machine communications, referred to in recital 249 of Directive (EU) 2018/1972, are not excluded from the scope of this Regulation and the relevant wholesale roaming access obligations. However, agreements on permanent roaming are subject to commercial negotiations and can be agreed by two roaming partners in the wholesale roaming contract. In order to allow the development of more efficient and competitive markets for machine-to-machine communications, it is expected that operators will increasingly respond to and accept all reasonable requests for roaming agreements on reasonable terms and explicitly allowing permanent roaming for machine-to-machine. They should be able to establish flexible roaming agreements enabling wholesale roaming services and to apply tariff schemes which are not based on the volume of consumed data but on alternative schemes, for example on the number of connected machines per month and outside the wholesale cap constraint.</p> <p>In that context, in the event of a cross border dispute, the parties involved should have recourse to the dispute resolution procedure laid down in Article 27 of Directive (EU) 2018/1972. ⇐ The negotiating parties should therefore have the option of agreeing not to apply maximum regulated wholesale roaming charges for the duration of wholesale roaming agreements. This ☒ That ☒ would exclude the possibility for either party to subsequently request the application of volume based maximum wholesale charges to actual consumption, as set out in ☒ this ☒ Regulation (EU) No 531/2012. This alternative should be without prejudice to</p>
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<p>provision of regulated retail roaming services in accordance with that Regulation. □</p> <p>Furthermore, the Commission Report takes note of the very recent development of new ways of trading wholesale roaming traffic, such as online trading platforms, that have the potential to facilitate the negotiation process between operators. The use of similar instruments could contribute to enhancing competition in the wholesale roaming market and drive further down actual wholesale rates charged. □</p>	<p>obligations as regards the provision of regulated retail roaming services in accordance with that Regulation.</p> <p>Furthermore, the Commission Report takes note of the very recent development of new ways of trading wholesale roaming traffic, such as online trading platforms, that have the potential to facilitate the negotiation process between operators. The use of similar instruments could contribute to enhancing competition in the wholesale roaming market and drive further down actual wholesale rates charged. □</p>
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- **Wholesale caps**

Current glidepath proposal is based on studies that

- were conducted prior to the Covid pandemic and accordingly the impacts of the COVID19 pandemic, notably on roaming, were not taken into account. The COVID-19 crisis and the travel restrictions have had an impact on current volumes, and the path to recovery and normalization is yet unknown.
- Without taking into account the needs related to 5G rollout, which differ materially from the LTE assumptions taken into account in the cost model that was developed in 2018. Indeed, the current LRIC model uses traffic volumes as a key driver and it is hence very likely that these 2018 hypotheses are not aligned with the volumes related to the 5G roll out for the coming years.

ETNO wishes to highlight the importance of a long run correct cost recovery for the sector.

- **Exceptional application of retail surcharges**

ETNO finds it proportional to continue to propose that the surcharge which retail companies may charge of end-users is maintained at the level of the wholesale price cap as long as the wholesale cap does not decrease to avoid negative impact on the surcharge to be imposed in case of permanent roaming or when exceeding the fixed package leading to potential revenues decrease and will encourage the fraud related to permanent roaming, cf. the proposed Art. 6 and recital 32. In addition, we support the new proposal to remove the cap for the sum of the national retail price and the roaming surcharge in case the end-user's consumption exceeds the consumption included in the subscription. Furthermore, ETNO supports that a correlation between the proposed Art. 9 about exceptional retail surcharges and the Code's regulation about voice termination, including the Commission's upcoming implementing act on the same topic.

- **Fluctuating currency exchange rates**

Mobile operators who are based in countries that do not use Euro will no longer be required to update the currency exchange rates twice a year, cf. the proposed Art. 1(4) and recital 13. This removes an administrative

burden on the operators and creates consistency in the regulation. Nevertheless, ETNO finds it cumbersome to find the correct currency exchange rates which the average calculation must be based on. ETNO proposes that the Commission shall publish the exchange rate on the last date to be included in the conversion on the day following that last day. This could be published on the Commission's website after the last day to be included in the average calculation.

- **Fair use policy**

ETNO also asks the co-legislators to revisit and amend the fair use policy by the Commission, in order to render it less complex and thus easier to work with. To make this effective the article on FUP should have a clear deadline for this revision. We therefore propose to amend the article as follows:

OLD	NEW
<p><i>Article 8 Implementation of fair use policy and of sustainability mechanism:</i></p> <p>1. in order to ensure consistent application of Articles 66b and 76c, the Commission shall, after having consulted BEREC, adopt and periodically review in the light of market developments implementing acts laying down detailed rules on the application of fair use policy and on the methodology for assessing the sustainability of the provision of abolition of retail roaming services at domestic prices surcharges and on the application to be submitted by a roaming provider for the purposes of that assessment. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 64(2).</p>	<p><i>Article 8 Implementation of fair use policy and of sustainability mechanism:</i></p> <p>1. By 30 June 2022, in order to ensure consistent application of Articles 66b and 76c, the Commission shall, after having consulted BEREC, adopt and periodically review in the light of market developments implementing acts laying down detailed rules on the application of fair use policy and on the methodology for assessing the sustainability of the provision of abolition of retail roaming services at domestic prices surcharges and on the application to be submitted by a roaming provider for the purposes of that assessment. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 64(2).</p>

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

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