



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 1 December 2011

17900/11

**Interinstitutional File:
2011/0187 (COD)**

**TELECOM 194
COMPET 575
MI 624
CONSOM 198
CODEC 2261**

PROGRESS REPORT

from: PRESIDENCY

to : COUNCIL

No. Cion prop.: 12639/11 TELECOM 99 COMPET 352 MI 355 CONSOM 116 CODEC 1182
+ REV1

No. prev. doc. 17439/11 TELECOM 185 COMPET 552 MI 603 CONSOM 191 CODEC 2169

Subject: Proposal for a Regulation of the European Parliament and of the Council on
roaming on public mobile communications networks within the Union (Recast)
- *Progress Report*

I. INTRODUCTION

1. The Commission adopted its proposal for a *Regulation of the European Parliament and of the Council on roaming on public mobile communications networks within the Union* (Recast) on 6 July 2011. The first Roaming Regulation --which covered solely voice traffic-- was introduced in June 2007. A review of this first regulation led to amendments in June 2009, extending both the scope --SMS (text) and wholesale-level data roaming services are now also regulated-- and duration of the Regulation until June 2012. Both the 2007 and 2009 Regulations covered a three-year period, with regulated price caps expiring at the end.

2. With its third Roaming proposal, the Commission seeks to introduce pro-competitive structural measures and proposes to extend the Regulation's validity until 30 June 2022. The proposed structural measures aim to tackle the root of the problem, i.e. the lack of competition and consumer choice, which cause the high roaming prices. This would be done by, on the one hand, ensuring that the market is open to different types of providers (thereby increasing roaming offers), while on the other hand raising consumers' awareness of roaming prices and increasing consumers' choice by allowing them to purchase roaming also as a stand-alone service.
3. Under the Polish EU Presidency, the Council Working Party on Telecommunications and the Information Society (hereinafter: WP TELE) examined the Roaming proposal in various meetings. On the basis of the discussions and Member States' comments, the Polish Presidency put together the present progress report in order to inform Ministers about the progress made to date and to identify difficult political issues in the Roaming proposal, which could be addressed in a Ministerial exchange of views at the TTE Council.

The Permanent Representatives' Committee has agreed to submit the Presidency's progress report to the Council.

4. The progress report and the exchange of views at the TTE Council of 13 December 2011 should contribute to the production, under the Danish Presidency, of a more firm Council position on the text, which could be presented and explained to the European Parliament. In the Parliament, a first exchange of views on the proposal has taken place in Parliament's ITRE Committee on 10 November 2011. A mini-hearing on the roaming proposal is planned to take place in the Parliament on 19 December 2011 and later the same week, ITRE will discuss a draft report on the proposal.

5. The Presidency is proposing to the Council to have an exchange of views on the Roaming proposal with the purpose of taking stock of the examination of the Commission's proposal so far and to identify and discuss issues where future work in the WP TELE under the incoming Danish Presidency could benefit from the political guidance of the Ministers. In order to steer such discussions, the Presidency has also produced in a separate document *Guidelines for the exchange of views at the Council*.

II. THE COMMISSION'S ROAMING PROPOSAL

1. Roaming is a service that allows a customer of a service provider, a mobile (virtual) network operator in one country, to obtain mobile communication services (voice, SMS or data) from a mobile network operator in another country. The service provider ensures that consumers remain connected to a mobile network abroad while using the same mobile device and the same telephone number. Before regulatory intervention, roaming prices were excessive and were not justified by the underlying costs of providing the services. In 2009, the retail EU roaming market accounted for nearly €5 billion in revenues. This is about 4% of the total EU mobile market.
2. EU mobile operators have reduced their roaming charges in line with the maximum price caps established by EU rules, first introduced in 2007 and amended in 2009. The 2009 amended Roaming Regulation, which will expire by 30 June 2012, improved price transparency, decreased the cost for roaming calls by more than 70% since 2005 and of sending a text message between EU Member States by 60%. Although the 2009 amended Roaming Regulation temporarily reduced prices for roaming phone calls and text messages, the Commission found that it has not remedied the lack of competition in the roaming market, with prices remaining stubbornly close to the retail price caps set by the EU rules.

3. In the Digital Agenda for Europe adopted in May 2010¹, the European Commission set the objective that differences between roaming and national telecoms tariffs should approach zero by 2015. The Commission therefore came forward with its present Roaming proposal, which addresses the underlying lack of competition in the markets for voice, text and data roaming and which seeks to solve in a structural way the problem of excessive retail prices for voice, text and data roaming, while foreseeing safeguard retail price caps not only for voice and text roaming but also for data roaming.
4. The approach chosen in the Roaming proposal is to make the mobile roaming market in the EU more competitive by combining the introduction of so-called structural measures with the temporary continuation of price regulation until these measures are implemented and produce their effects. The proposed retail caps would serve as a mere safety-net for consumers, while the Commission expects that the proposed competition-enhancing structural measures will deliver innovative EU-wide offers and cheaper prices, significantly below the safeguard caps.
5. The proposed structural measures are expected to boost competition by allowing customers, from 1 July 2014, to sign up for an alternative mobile roaming offer, separate from their contract for national mobile services, whilst using the same phone number. Consumers would therefore be able to easily compare roaming offers and benefit from lower prices.

A second structural measure would give mobile operators, including so-called virtual mobile operators who do not have their own network, the right, from 1 July 2012, to access other operators' networks in other Member States at regulated wholesale prices for the purpose of providing roaming services, and so encourage more operators to compete on the roaming market.

¹ Doc. 9981/1/10 REV 1

6. Until competition drives retail prices down as a result of the effect of the structural measures, the Commission proposes to introduce a new retail price cap for mobile data services and to progressively lower current retail price caps on voice and text (SMS) services. According to the proposal, the consumer price caps would stay in place until 30 June 2016 (but, according to the Commission, they could be extended in case the review carried out in 2015 concludes that developments in the degree of competition and the level of charges do not allow to remove them).

<i>Current and proposed retail price caps (excluding VAT)</i>	<i>Current</i>	<i>1/7/2012</i>	<i>1/7/2013</i>	<i>1/7/2014</i>
<i>Data (per MB)</i>	None	90 cents	70 cents	50 cents
<i>Voice-calls made (per minute)</i>	35 cents	32 cents	28 cents	24 cents
<i>Voice-calls received (per minute)</i>	11 cents	11 cents	10 cents	10 cents
<i>SMS (per SMS)</i>	11 cents	10 cents	10 cents	10 cents

Under the proposal, caps on the prices operators charge each other would be retained and would fall annually until 2014, reflecting the declining costs of providing roaming services. After 2014, they would remain stable until the proposed Regulation expired in 2022. Wholesale price caps could be removed as from 2018 if market data indicated that competition had developed sufficiently.

<i>Current and proposed wholesale price caps</i>	<i>Current</i>	<i>1/7/2012</i>	<i>1/7/2013</i>	<i>1/7/2014</i>
<i>Data (per MB)</i>	50 cents	30 cents	20 cents	10 cents
<i>Voice (per minute)</i>	18 cents	14 cents	10 cents	6 cents
<i>SMS (per SMS)</i>	4 cents	3 cents	3 cents	2 cents

7. Other measures already introduced to increase transparency and consumer protection are retained in the current proposal, such as the mechanism to avoid "bill shocks" when using data roaming services in the EU: consumers' and business travellers' monthly bills for data access over mobile networks when abroad would continue to be limited to €50 unless the customer explicitly agreed otherwise. Also, under the new Regulation, operators would still be obliged to provide information on roaming prices to consumers when crossing into another Member State, but customers would be able to easily opt out of receiving this information.

III. PRINCIPAL GENERAL REACTIONS OF THE DELEGATIONS

1. Under the Polish Presidency, the WP TELE examined the Commission's proposal and the accompanying impact assessment on six occasions. In general, most delegations welcomed the Commission's proposal and no delegation questioned in general the Commission's approach to making the international mobile roaming market competitive with the combination of structural measures while retaining transitory price regulation. However, most delegations sought for clarification with regard to the exact scope of the wholesale access obligation, inquired about the technical and practical feasibility of decoupling domestic mobile services and international roaming services, about the implementation time frame for particular actions indicated in the regulation, as well as expressed some concerns about the level of the proposed price caps and the margin of the price caps at wholesale and retail level.
2. The WP TELE discussed the detailed legislative provisions of the proposal on the basis of three clusters, covering the main elements of the proposal: structural measures; price caps; transparency, safeguards and supervision. The principal reactions of the delegations on these three clusters are given below.

Structural measures (articles 1-5 and recitals 18-24)

3. Many delegations enquired about the level of the envisaged effects of the structural measures: would they indeed meet the Digital Agenda target of narrowing or closing the gap between current roaming prices and domestic prices? In addition, concerns were expressed about the envisaged costs regarding the implementation of the structural solutions, which, as assumed by some delegations, could be substantially higher than the €300 million estimated by the industry, as indicated in the Commission's impact assessment.

4. Delegations put detailed questions on how the wholesale access obligation would work in practice, e.g. according to which criteria should mobile network operators have to meet "reasonable requests" for wholesale roaming access. Some delegations believe that the text of the Regulation should better clarify the scope of access (direct wholesale roaming and wholesale roaming resale) as well as the maximum period for granting access. Many delegations believed that the scope of the wholesale access obligation should cover wholesale inbound roaming in the visited network as well as resale wholesale roaming in the home network.

5. Delegations also questioned the process for the Body of European Regulators for Electronic Communications (BEREC)² to publish guidelines on wholesale access conditions for the delivery of roaming services and some delegations argued that a deadline should be put to BEREC to produce such guidelines. Issues requiring further discussion on the wholesale access obligation concern the scope of the access obligation, the pricing rules related to the access and a time period for granting access. Regarding the price for the access, some delegations pointed out that, in order to recover costs not directly related to wholesale access, network operators should be allowed to levy a charge to cover a reasonable part of the costs separately from the price for the actual roaming service.

6. Delegations appear to support the approach of granting end-users the right to select an alternative roaming provider as facilitating the availability of roaming as a stand-alone service would address structural problems by raising consumer awareness of roaming prices, allowing distinct consumer choice concerning roaming services and thus increasing competitive pressure on the demand side. In this context, however, delegations did question the proposed technical solution for de-coupling³, which needs to be put in place in order to meet the objectives of the structural measures.

² In accordance with Regulation (EC) No 12111/2009 of 25 November 2009 establishing BEREC and the Office, BEREC assists the European Commission and the National Regulatory Authorities (NRAs) in the implementation of the EU regulatory framework for electronic communications, gives advice to the EU institutions and complements at European level the regulatory tasks performed at national level by the NRAs.

³ In the Commission's proposals, a subscriber choosing a different provider for roaming services might have to be given a new SIM card, which would work for both domestic and roaming services. In this case the domestic services would be provided by the subscriber's original operator, and the subscriber's roaming services would be provided by an alternative operator using the same SIM card. Once the subscriber enters the territory of another EU Member State, the subscriber's phone would recognise that the subscriber were abroad and switch automatically to his roaming provider.

7. Many delegations are not yet convinced at this stage about one or the other technical solution for decoupling and are therefore reluctant to predetermine the technical solution in the Regulation. A number of delegations proposed to clearly set out general principles in the Regulation in order to provide BEREC with sufficient guidance, whilst at the same time retaining flexibility to future-proof the Regulation in light of rapid market and technological developments. Many delegations referred to the need to fully involve BEREC in the definition of a technical solution.⁴ The Regulation could consequently set out criteria according to which BEREC and industry could work out guidelines for technical solutions, which could be made binding in the EU through the adoption of implementing acts. In this regard, the Regulation could include, for example, the following criteria: the ability to effectively foster competition, user-friendliness, cost-effectiveness, network integrity and time constraints for implementation.
8. Delegations showed concern with the possible implications any technical solution could have in terms of costs, e.g. the change of SIM-card, the costs of which are not included in the Commission's estimation of the total costs. Delegations also expressed concerns regarding the compatibility of intra-EU roaming with international roaming once the Regulation would be implemented.⁵

⁴ BEREC is currently investigating less complex solutions, such as roaming resale and local break out for data, which would deliver benefits to different consumer segments, quickly and without undue expenditure of time and resources on implementation. According to BEREC, the Commission's parallel proposals to reduce wholesale prices and introduce a general right of wholesale access for roaming purposes, can already be expected to deliver material competition benefits in the medium term.

⁵ EU citizens travelling in other parts of the world outside the EU might face very high roaming costs but the EU cannot apply its legislation to countries outside the EU. According to the Commission, however, EU mobile operators could use the Roaming Regulation as a benchmark in negotiations with operators outside the EU.

Wholesale and retail price caps (articles 6-9, 11-13 and recitals 25-64 and 80), the Withdrawal of these caps (article 13 and recitals 65, 79 and 80) and the Review mechanism (article 19 and recitals 81-82)

9. With regard to the transitory wholesale and retail price caps, discussions focussed on the proposed level of these caps and the linkage between the levels of the wholesale and retail caps. In general, some delegations believed that the level of retail caps could possibly be set lower so that the margin between the wholesale and retail caps could be reduced and the retail prices would not be more than three times the wholesale prices. With regard to the caps generally and the retail caps for data roaming particularly, the issue appears to be finding the right balance between the interests of consumers, who are looking for cheaper prices, and offering opportunities for potential new market entrants, who might refrain from entering the market where price caps are set too low. In general, delegations appeared to prefer to start a detailed examination of the level of the caps once discussions on the structural measures have advanced. Delegations seemed to agree that, in order to determine the most adequate level for the various caps, due consideration should be given to the need to create incentives for alternative providers to enter the market so that market dynamics would yield more competitive prices, while at the same time ensuring that consumers are protected from excessive price levels.

10. With regard to the price cap withdrawal mechanism, delegations put questions regarding the proposed date for their expiration (2016 for retail caps), which for some delegations would be premature as the structural solutions might not yet be fully in place and competition might not yet be sufficiently developed in the roaming market. Whereas some delegations were not clear about the need for a threshold, other delegations questioned the level of 75% for the threshold for earlier removal of the caps, i.e. if average wholesale charges based on off-net unbalanced traffic would fall to 75% or less of the caps they will be withdrawn. Some delegations plead in favour of tightening the threshold to 50% rather than 75% of the retail price cap as the proposed price caps may be too high to indicate competition across the EU .
11. With regard to the Review mechanism, many delegations felt that the proposed date of 30 June 2015 for the Commission to report on the functioning of the Regulation would be too early to usefully assess the impact of the structural measures on competition. Concerning the review of the Regulation, various delegations submitted initial views as to its scope and timing but also pointed out that these suggested adjustments would depend on the Council's final position regarding the level and duration of the price caps.

Transparency and safeguard mechanism (articles 14-15 and recitals 67-74), Supervision and enforcement (article 16)

12. Delegations appeared to agree with the new possibility in the Roaming proposal to easily opt out from the automatic message service as certain customers might be well informed about roaming charges. With regard to bill-shocks and the cut-off limit, some delegations pointed out that, although certain pre-paid customers know the amount of credit available to them and are therefore less likely to suffer from bill shocks, there could still be a need to apply the cut-off limit to other pre-paid customers. A considerable number of delegations called for an extension of the information requirements and the transparency mechanism provided for in the draft Regulation to the use of data roaming services outside the Union.

13. Some delegations submitted wording to amend definitions in art. 2 so that they better reflect on revised proposals for articles regarding structural measures.

IV. OUTLOOK

1. The current Roaming Regulation will expire by 30 June 2012 and there appears to be broad political support, both within the Council as well as in the European Parliament, to reach agreement on a new Regulation in time, i.e. by 1 July 2012. This will require a major effort, not only from the co-legislators but also from the main stakeholders in the debate, such as BEREC and the roaming operators, as they will need to find and implement structural and technical measures, which should contribute to making the EU roaming market more competitive. Like the Polish Presidency, the incoming Danish Presidency has indicated that the Roaming proposal is a high priority and that the aim will be to find a first reading agreement with the Parliament early 2012.
2. In the European Parliament, the industry (ITRE) committee bears main responsibility for the Roaming proposal. On 10 November 2011, rapporteur Mrs. Niebler and the shadow rapporteurs⁶ presented first impressions on the proposal. In the week of 19 December 2011, a mini-hearing will take place on roaming, Mrs. Niebler's draft report will be discussed in the ITRE committee and the deadline for amendments has also been set in this week. A vote in the ITRE committee is tentatively foreseen for the end of February 2012 with a plenary vote in April 2012.

⁶ The ITRE shadow rapporteurs are: Mr. Goebbels (S&D), Mrs. Valean (ALDE), Mr. Lamberts (Greens), Mr. Chichester (ECR) and Mrs. Tzavela (EFD).