COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on roaming on public mobile networks within the Community and amending Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services

{SEC(2006)yyy}

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

The ability of customers of mobile electronic communications services to use their mobile handsets to make and receive calls while travelling abroad ('international roaming') is an important component of the service, and contributes to the social and economic welfare of the Community as a whole. However, the high prices that mobile users pay for this service has been identified as a persistent problem by consumer organisations, regulators and policy makers across the Community. While a range of action has been taken in recent years to address this issue under the existing legal framework, the tools available have not proved effective in reducing prices to a level that reflects the underlying costs of providing the services concerned.

The objective of this proposal is therefore to amend the existing regulatory framework for electronic communications to provide the necessary legal basis for effective and timely action to bring about substantial reductions in the level of mobile roaming charges across the Community in a harmonised manner. This is to be achieved by applying the approach that prices paid by users of public mobile networks for roaming services when travelling within the Community should not be unjustifiably higher than the charges payable when calling within their home country (the "European Home Market Approach").

The mechanism selected to achieve this objective in a proportionate manner is the application to terrestrial mobile operators within the Community of safeguard maximum price limits for the provision of roaming services for voice calls between Member States at retail and wholesale level.

- **General context**

The problem of high roaming charges for mobile customers travelling in Europe was first identified in mid-1999 when the Commission decided to carry out a sector inquiry covering national and international roaming services. This led to the Commission opening proceedings alleging the past infringement of Article 82 of the Treaty by certain mobile operators in the United Kingdom and Germany.

International roaming was also recognised as an issue for potential ex ante regulation at the time of the adoption of the 2002 regulatory package for electronic communications, through the identification of the wholesale national market for international roaming on public mobile networks in the Commission's Recommendation of 11 February 2003 on Relevant Product and Service Markets within the electronic communications sector.

The European Regulators' Group (ERG) noted in May 2005 that retail charges were very high without clear justification; that this appeared to result both from high wholesale charges levied by the foreign host network operator and also, in many cases, from high retail mark-ups charged by the customer's own network operator; that reductions in wholesale charges were often not passed through to the retail customer; and that consumers often lacked clear information on the charges for roaming.

In October 2005 the Commission drew attention to the problem of high international roaming charges and the lack of price transparency by publishing a consumer information website that not only corroborated the fact that charges are in many cases manifestly excessive, but showed a variation in prices across the Community that could not be justified for calls with the same characteristics.

The European Parliament, in a resolution on 1 December 2005 on European electronic communications regulation and markets 2004, welcomed the Commission's initiative on transparency in the international roaming sector and called on the Commission to develop new initiatives in order to reduce the high costs of cross-border mobile telephone traffic.

In December 2005, the European Regulators' Group alerted the European Commission to its concern that measures being taken by NRAs would not resolve the problem of high prices, noting that roaming creates an exceptional instance where an apparent case of consumer detriment is not prospectively solved by the application of the framework.

In March 2006 the European Council noted in its conclusions the importance for competitiveness of reducing roaming charges, in the context of the need for focused, effective and integrated information and communication technology (ICT) policies both at European and national level, in order to achieve the renewed Lisbon Strategy goals of economic growth and productivity.

While some operators have announced plans to reduce the prices for international roaming services in response to the EU initiatives, there has been no general industry response that would achieve the objectives of this proposal without the need for regulatory action. In particular there is no guarantee that all international roaming customers would see the benefits of lower prices envisaged by the proposal.

This proposal therefore aims to provide a harmonised legal basis for such action that will facilitate the completion of the internal market for electronic communications.

- **Existing provisions in the area of the proposal**

The instruments of Community and national competition law permit competent authorities to sanction anti-competitive behaviour by individual undertakings. However, competition law instruments address the activities of individual undertakings and therefore cannot provide a solution that safeguards the interests of all e-communications users and market players within the Community.

The existing regulatory framework for electronic communications provides a mechanism for the imposition of ex ante regulatory obligations on undertakings within the electronic communications sector, on the basis of the definition of relevant markets susceptible to ex ante regulation and a process of market analysis by the regulatory authorities. This results in the imposition of regulatory obligations where undertakings are found to be dominant in the relevant market. The wholesale national market for international roaming on public mobile networks has been identified as such a relevant market. On the other hand, no retail market for the provision of such services has been identified as a relevant market, since roaming services at the retail level are not purchased independently but constitute only one element of a broader retail package. Consequently, due to the specific characteristics of the markets for international roaming services, and the cross-border nature of those services, it has not been possible for regulators to address high prices for international roaming by means of these procedures.

Arguably the Community regulatory framework may leave some scope for Member States to address the problems identified in the international roaming markets by means of other legislative measures, such as consumer protection legislation. However, given the cross-border nature of international roaming services, in which wholesale providers are situated in Member States other than that of the consumers using those services, any such legislative action by Member States would be ineffective and give rise to divergent results across the Community, in the absence of the harmonisation ensured by this proposal.

The existing Community regulatory framework (Article 19 of the Framework Directive, 2002/21/EC) provides for the Commission to issue Recommendations on the harmonised application of its provisions. However, such a Recommendation in this area would not be effective, since it would not be legally binding and the Member States to which it was addressed would still only have available the existing regulatory tools.

The retail and wholesale roaming markets exhibit unique characteristics which justify exceptional measures going beyond the mechanisms otherwise available under the 2002 regulatory framework.

- **Consistency with the other policies and objectives of the Union**

This proposal is in line with the renewed Lisbon Strategy for promoting growth and jobs through greater competitiveness and the Commission's associated i-2010 initiative. The importance of reducing international roaming prices within the Community was explicitly recognised by the March 2006 European Council.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

The Commission services launched a two-phased consultation in early 2006[1]. During the first round, general feedback on broad principles was sought. The services then launched a second round, with a more concrete concept for regulation as a basis for discussion. During the two phases, 152 submissions were received from a range of stakeholders including operators, NRAs, Member States, trade and user associations and others.

Summary of responses and how they have been taken into account

The consultation exercises demonstrated widespread support among Member States, NRAs, consumer groups and even some operators for the Commission's goal of reducing roaming charges. While most operators opposed regulation and argued that the market is competitive and that prices are falling, some proposed either self-regulation or some form of regulation.

[1] The first consultation ran from 20/02/2006 to 22/03/2006 and the second from 03/04/2006 to 12/05/2006. The results are available on http://ec.europa.eu/information_society/activities/roaming/internal_market/consultation/index_en.htm

As a result of the submissions received, the Commission adapted its original concept of the "home pricing principle", which would have linked prices for international roaming to the prices paid by roaming customers for equivalent calls made on their home network, to arrive at the concept of the "European Home Market Approach", under which roaming prices are brought closer to domestic prices through the application of common Community-wide safeguard maximum price limits, thereby achieving a high level of protection for users while safeguarding competition.

- **Collection and use of expertise**

There was no need for external expertise other than the input from interested parties provided in the context of the public consultation.

- **Impact assessment**

The impact assessment for this proposal examined the following range of options: no policy change, self-regulation, co-regulation, soft law and targeted regulation.

'No policy change' would involve relying on market and technological developments to solve the problem while continuing to use existing regulatory tools and competition law remedies. It may be noted that national regulatory authorities have already indicated that existing regulatory tools are insufficient to address this problem.

Self-regulation and co-regulation were also considered, although to date there has been no general industry initiative to propose such measures. The risk of certain consumers being left with extremely high charges even though average prices might fall could undermine the overall objective of such approaches.

The option of tackling the issue on the basis of recommendations or other soft law was also analysed. However, given the structural nature of the problem of high consumer prices for international roaming and the fact that existing provisions in the Community regulatory framework for electronic communications have proved to be insufficient to resolve the problem, it was apparent that initiatives that did not alter the legal framework for remedial action would not achieve the desired objectives.

Within the broad option of targeted regulation, three different approaches were analysed: wholesale regulation alone, retail regulation alone and a combination of wholesale and retail regulation.

Imposing regulation at wholesale level only would remedy the problem of high charges between operators but would not guarantee that lower wholesale prices would be passed through to retail roaming customers, given the lack of competitive pressures on operators to do so. The objective of substantial reductions in retail prices for European roaming customers would therefore not be ensured.

Retail regulation alone was also considered, given that it would tackle the problem directly. However, in leaving wholesale regulation to one side such an approach might subject smaller operators to price squeeze, leading to large-scale cessation of service.

Finally, a combination of wholesale and retail regulation was examined, in a number of variations. The conclusion of the impact assessment was that such a combined approach to wholesale and retail regulation, involving the establishment of common Community-wide maximum safeguard price limits at both wholesale and retail level, provides the optimum solution.

3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The proposal provides for the establishment, on the basis of the 'European Home Market Approach', of common, Community-wide maximum price limits on the charges that mobile network operators may levy for the wholesale provision of mobile roaming services for mobile voice telephony calls made from a visited network in the Community and terminating on a public telephone network also located within the Community.

The maximum price limits take account of the differences in the underlying costs of providing international roaming services for calls made to a destination within a visited country, on the one hand, and calls made back home or to a third country within the Community, on the other. The proposal therefore provides for a lower wholesale price limit for the former category of calls (set at twice the Community average mobile termination rate for mobile network operators designated as having significant market power) and a higher price limit for the latter category (set at three times the Community average mobile termination rate for such operators).

In order to ensure that there is no price squeeze in the provision of mobile roaming services at retail level, the proposal also provides for safeguard price limits at the retail level for the same categories of roaming call, set at 130% of the applicable wholesale limit.

In accordance with the 'European Home Market Approach' and in order to ensure that charges payable by roaming customers for receiving calls while roaming abroad in the Community more closely reflect the underlying costs incurred by their home mobile provider in providing this service, the proposal also provides that those charges should not exceed a maximum price limit.

The price limits provided with regard to the retail charges for the making of regulated roaming calls will take effect as a matter of law six months after the entry into force of the proposed measure.

The proposal promotes transparency for retail charges by introducing an obligation on mobile providers to give personalised information on retail roaming charges to their roaming customers on request and free of charge. Each customer may choose whether to receive the information by means of an SMS (Short Message Service) or orally over their mobile telephone. In addition, mobile providers are obliged to give information on roaming charges when subscriptions are taken out, on a periodic basis and when there are substantial changes to roaming charges.

The proposal also gives national regulatory authorities the power and responsibility to enforce compliance, in line with their existing roles under the Community regulatory framework for electronic communications. It also gives them the task of monitoring developments in retail and wholesale prices for the provision of voice and data communications services, including SMS (Short Message Service) and MMS (Multimedia Message Service), to mobile customers when roaming in the Community.

Finally, the proposal amends the provisions of the existing regulatory framework, notably the Framework Directive (2002/21/EC), to recognise the specific status of the measures contained in the proposal within that framework and to ensure that the general provisions of the framework continue to apply to roaming services regulated by the proposal (subject to its specific requirements).

- **Legal basis**

Article 95 EC

- **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

In view of the specific cross-border nature of the roaming services covered by the proposed action, by virtue of which the operators providing wholesale roaming services are located in Member States other than that of the customer's home operator, and of the fact that the proposed action requires amendment of the existing Community regulatory framework, action by Member States alone would not be sufficient or capable of achieving the objectives of the proposal.

Action by Member State alone to address the problem covered by this proposal could risk raising issues of conformity with the existing Community regulatory framework (if left unamended) and/or lead to divergent results, thereby jeopardising the achievement of the internal market.

Since the provision of mobile roaming services within the Community by its very nature affects all Member States and touches on the interests of parties in different Member States simultaneously, a harmonised approach at Community level is essential to guarantee consistency of application and ensure that the interests of consumers and undertakings in all Member States are safeguarded.

Since the proposed action requires the amendment of the existing Community regulatory framework for electronic communications and the establishment of common safeguards for mobile users and operators on a non-discriminatory basis across the Community, the objectives of this proposal cannot be achieved by the Member States in a secure, harmonised and timely manner and can therefore be better achieved by the Community.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

The regulatory action opted for in this proposal involves the least amount of interference possible in the commercial behaviour of the undertakings affected. The setting of safeguard maximum price limits at wholesale and retail levels ensures the minimum distortion of competitive conditions consistent with the objectives, since it preserves the freedom of operators to compete and differentiate their offerings within the safeguard limits provided. Of all the regulatory options considered, it also presents the least risk of creating distortion in related but separate markets for mobile services, whether at retail or wholesale level. The proposed action also leaves the task of monitoring and enforcing compliance to the regulatory authorities responsible for electronic communications in each Member State, since they are closest to the markets and operators concerned.

Due to the simplicity of the mechanism to be established by the proposal and the fact that it will apply directly within the Community by virtue of its status as a Regulation, the administrative and financial burden on the Community, national governments and authorities will be minimised. There will be no need for transposition or extensive implementation of its requirements within national law and the process of monitoring compliance will fall within the normal activities of national regulatory authorities. Indeed the proposal will lighten the administrative burden on national regulators in as much as it will remove the need for those authorities periodically to analyse and review the national wholesale market for international roaming on public mobile networks within their territory.

- **Choice of instruments**

Proposed instrument: regulation.

The urgency and persistence of the problem identified requires a simple, effective and timely solution for the European consumer, applied in a harmonised manner across the Community and without the need for transposition or extensive implementation at national level. Such a national implementation process would be likely to significantly delay the effect of the measure in some Member States, with the result of distorting the competitive conditions for mobile operators in different Member States. A Regulation is therefore the only instrument that will achieve the desired objective.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

5. ADDITIONAL INFORMATION

- **Simplification**

The proposal will create legal certainty for mobile users and market players alike, by replacing the existing mechanisms under the regulatory framework, which are of uncertain application to international roaming services for voice telephony, with a simple mechanism that is transparent and predictable for all concerned.

The proposal will remove the requirement for national regulatory authorities to carry out extensive and complex data gathering for the purposes of analysing the wholesale national market for international roaming on public mobile networks and obviates the need for national governments and authorities to expend resources in seeking alternative solutions and strategies at national level.

Since it provides for a simple and transparent price limit for regulated roaming calls, the proposed action will not impose significant administrative burdens on undertakings or other interested parties. Indeed, by removing the need for national authorities to carry out analyses of the wholesale market for international roaming, it will also lighten the burden of the periodic data collection and consultation procedures required by the market review process. The data required for the application of the proposal are of a kind already produced by operators and will therefore not entail an increased burden.

- **Review/revision/sunset clause**

The proposal provides for a review of the Regulation after two years. This means that if at that time market developments show that the Regulation is no longer required, the Commission will consider proposing its repeal, in line with the principles of better regulation.

- **European Economic Area**

The proposed act concerns an EEA matter and should therefore extend to the European Economic Area.

- **Detailed explanation of the proposal**

Article 1 sets out the aim and scope of the Regulation: introduction of the European Home Market Approach for users of public mobile telephone networks for international roaming voice services when travelling within the Community. The European Home Market Approach aims to achieve a high level of protection for these users by setting a maximum limit on the wholesale and retail prices that may be levied by mobile operators for international roaming services provided within the Community.

Article 2 sets out the definitions for the Regulation. ‘Home provider’, ‘home network’, ‘international roaming’, ‘regulated roaming call’, ‘roaming customer’ and ‘visited network’ are the key new definitions.

Article 3 sets the maximum limits for the prices levied by mobile network operators for the provision of regulated roaming calls at wholesale level. The maximum wholesale charge applicable to regulated roaming calls made to the roaming customer's home country or a third country within the Community is three times the average mobile termination rate while the maximum wholesale charge for the provision of regulated roaming calls to a destination within the visited country is twice the average mobile termination rate.

Article 4 sets the maximum limits on the prices that can be charged at retail level by the home mobile provider for a regulated roaming call. This is 130% of the applicable maximum wholesale charge for that call (excluding VAT).

Article 5 provides that the retail price limits in Articles 4 will take effect after six months.

Article 6 sets the maximum limits on the retail price that the home mobile provider can charge its roaming customer for the receipt of calls while roaming within the Community. This is 130% of the average mobile termination rate published pursuant to Article 10 (excluding VAT).

Article 7 provides for improved transparency for retail roaming charges, by obliging the home provider to give its roaming customers information on these charges on request and free of charge, either by means of a Short Message Service (SMS) or orally. In addition, improved transparency is obtained by asking the home provider to furnish information on roaming charges when subscriptions are taken out, on a periodic basis and in case of substantial changes.

Article 8 sets out the powers and obligations of national regulatory authorities to supervise and enforce compliance with the Regulation within their territory.

Article 9 requires Member States to lay down rules on the penalties which should apply to breaches of the Regulation.

Article 10 sets out the rules governing the determination and publication of the average mobile termination rate used for calculating the maximum price limits in Articles 3 and 6.

Article 11 introduces the necessary amendment to the Framework Directive in order to ensure the coherent application of the directives making up the regulatory framework and the Regulation itself.

Article 12 sets the time-limit for review of the Regulation.

Article 13 provides that the Commission shall be assisted by the Communications Committee set up under the Framework Directive.

Article 14 requires Member States to notify to the Commission the identity of their national regulatory authorities charged with carrying out tasks under the Regulation.

Article 15 provides for measures needed to implement the Regulation to be adopted pursuant to the Committee procedure referred to in Article 13.

Article 16 provides that the Regulation will enter into force on the day following the date of its publication in the Official Journal of the European Union.

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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission[2],

Having regard to the opinion of the European Economic and Social Committee[3],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[4],

Whereas:

(1) The high level of the prices payable by users of public mobile telephone networks when using their mobile telephones when travelling abroad within the Community is a matter of concern for national regulatory authorities. The European Regulators Group[5] noted at its plenary meeting in May 2005 (*inter alia*) that retail charges were very high without clear justification; that this appeared to result both from high wholesale charges levied by the foreign host network operator and also, in many cases, from high retail mark-ups charged by the customer's own network operator; that reductions in wholesale charges were often not passed through to the retail customer; and that there were strong linkages between the markets in the different Member States.

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2 OJ C , , p. .

3 OJ C , , p. .

4 OJ C , , p. .

5 See Commission Decision 2002/627/EC of 29 July 2002 establishing the European Regulators Group for Electronic Communications Networks and Services (OJ L 200, 30.7.2002, p. 38), as amended by Commission Decision 2004/641/EC of 14 September 2004 (OJ L 293, 16.9.2004, p. 30)

(2) Directives of the European Parliament and of the Council 2002/21/EC of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)[6]; Directive 2002/19/EC of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive)[7]; Directive 2002/20/EC of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)[8]; Directive 2002/22/EC of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)[9]; and Directive 2002/58/EC of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector[10], together "the 2002 regulatory framework for electronic communications", aimed at creating an internal market for electronic communications within the Community while ensuring a high level of consumer protection through enhanced competition.

(3) The 2002 regulatory framework for electronic communications draws on the principle that *ex ante* regulatory obligations should only be imposed where there is not effective competition, providing[11] for a process of periodic market analysis and review of obligations by national regulatory authorities, leading to the imposition of *ex ante* obligations on operators designated as having significant market power. The elements constituting this process include the definition of relevant markets in accordance with the Commission's Recommendation of 11 February 2003 on relevant product and service markets within the electronic communications sector[12] (the Recommendation), the analysis of the defined markets in accordance with the Commission's Guidelines[13], the designation of operators with significant market power and the imposition of *ex ante* obligations on operators so designated.

(4) The Recommendation identifies as a relevant market susceptible to *ex ante* regulation the wholesale national market for international roaming on public mobile networks[14]. However, the work undertaken by the national regulatory authorities (both individually and in the European Regulators Group) in analysing the wholesale national markets for international roaming has demonstrated that it has not yet been possible for a national regulatory authority to address effectively the high level of wholesale international roaming charges because of the difficulty in identifying undertakings with significant market power in view of the specific circumstances of international roaming, including its cross-border nature.

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6 OJ L 108 of 24.4.2002, p 33.

7 OJ L 108 of 24.4.2002, p. 7.

8 OJ L 108 of 24.4.2002, p. 21.

9 OJ L 108 of 24.4.2002, p. 51.

10 OJ L 201 of 31.7.2002, p. 37.

11 See in particular Articles 14 to 16 of the Framework Directive, Articles 7 and 8 of the Access Directive and Articles 16 and 17 of the Universal Service Directive

12 Commission Recommendation of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services - C(2003) 497) OJ L114, 8.5.2003, p.45

13 Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services (2002/C 165/03) OJ C 165, 11.7.2002, p.6

14 Market 17 in the Annex

(5) As regards the retail provision of international roaming services on the other hand, the Recommendation does not identify any retail market for international roaming as a relevant market, due (among other things) to the fact that international roaming services at retail level are not purchased independently but constitute only one element of a broader retail package purchased by customers from their home provider.

(6) In addition, the national regulatory authorities responsible for safeguarding and promoting the interests of mobile customers normally resident within their territory are not able to control the behaviour of the operators of the visited network, situated in other Member States, on whom those customers depend when using international roaming services. This limitation would also diminish the effectiveness of measures taken by Member States based on their residual competence to adopt consumer protection rules.

(7) Accordingly, there is pressure for Member States to take measures to address the level of international roaming charges, but the mechanism for *ex ante* regulatory intervention by national regulatory authorities provided by the 2002 regulatory framework for electronic communications has not proved sufficient to enable those authorities to act decisively in the consumers' interest in this specific area.

(8) Furthermore, the European Parliament's resolution of 1 December 2005 on European electronic communications regulation and markets 2004[15] called on the Commission to develop new initiatives to reduce the high costs of cross-border mobile telephone traffic, while the European Council of 23-24 March 2006 concluded that focused, effective and integrated information and communication technology (ICT) policies both at European and national level are essential to achieving the renewed Lisbon Strategy's[16] goals of economic growth and productivity and noted in this context the importance for competitiveness of reducing roaming charges.

(9) Although the 2002 regulatory framework for electronic communications, on the basis of considerations apparent at that time, provided for the removal of all obstacles to trade in the area that it harmonises, that fact cannot prevent the adaptation of the harmonised rules in step with other considerations in order to find the most effective means of achieving a high level of consumer protection whilst improving the conditions for the functioning of the internal market.

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15 EP Resolution 2005/2052(INI)

16 Communication to the Spring European Council, Working together for growth and jobs, A new start for the Lisbon Strategy, COM (2005) 24 of 2.2.2005 and European Council Presidency Conclusions 22-23 March 2005.

(10) It is therefore necessary to amend the 2002 regulatory framework for electronic communications to allow for a departure from the rules otherwise applicable, namely that prices for service offerings should be determined by commercial agreement in the absence of significant market power, and thereby to accommodate the introduction of complementary regulatory obligations which reflect the specific characteristics of international roaming services.

(11) The retail and wholesale roaming markets exhibit unique characteristics which justify exceptional measures which go beyond the mechanisms otherwise available under the 2002 regulatory framework.

(12) Regulatory obligations should be imposed at both retail and wholesale level to protect the interests of roaming customers, since experience has shown that reductions in wholesale prices for international roaming services may not be reflected in lower retail prices for roaming, due to the absence of incentives to do so. On the other hand, action to reduce the level of retail prices without addressing the level of the wholesale costs associated with the provision of these services could risk disrupting the orderly functioning of the international roaming market.

(13) The resulting obligations should take effect as soon as possible, while providing the operators concerned with a reasonable period to adapt their prices and service offerings to ensure compliance, and apply directly in all Member States.

(14) A common mechanism, to be called the European Home Market Approach, should be employed for ensuring that users of public mobile telephone networks when travelling within the Community do not pay excessive prices for international roaming voice services when making calls or receiving voice calls, thereby achieving a high level of consumer protection while safeguarding competition between mobile operators. In view of the cross-border nature of the services concerned, a common mechanism is needed so that mobile operators are faced with a single coherent regulatory framework based on objectively established criteria.

(15) The most effective and proportionate mechanism for regulating the level of prices for making international roaming calls in accordance with the above considerations is the setting at Community level of maximum per-minute charges at both retail and wholesale level.

(16) This common mechanism should ensure that retail charges for international roaming provide a more reasonable reflection of the underlying costs involved in the provision of the service than has been the case whilst allowing operators the freedom to compete by differentiating their offerings and adapting their pricing structures to market conditions and consumer preference.

(17) The common mechanism should be simple to implement and monitor in order to minimise the administrative burden both for the operators which are affected by its requirements and for the national regulatory authorities charged with its supervision and enforcement.

(18) The maximum price limits should take account of the different elements involved in the making of an international roaming call (including overheads, signalling, call origination, transit and termination) and the differences in the underlying costs of providing international roaming services in respect of calls made to a destination within a visited country, on the one hand, and calls made back to the roaming customer's home country or a third country within the Community, on the other.

(19) The maximum price limit for the provision of an international roaming call at wholesale level should be based on the average per-minute mobile termination rate for operators with significant market power, as such termination rates are already the subject of regulatory supervision in accordance with the 2002 regulatory framework for electronic communications and, therefore, should be determined by reference to the principle of cost-orientation. Given the characteristics of the market for call termination on individual public mobile networks and the cross-border nature of international roaming, they also provide a stable basis for regulation that is representative of the cost structures of mobile networks across the Community. The average mobile termination rate provides a reliable benchmark for the core cost components at wholesale level and a maximum wholesale price limit based on an appropriate multiple of such an average mobile termination rate should therefore provide an assurance that the real costs of provision of regulated roaming services can be recovered.

(20) The maximum price limit applicable at retail level should provide roaming customers with the assurance that they will not be charged an excessive price when making a regulated roaming call, whilst leaving the home operators sufficient margin to differentiate the products they offer to customers.

(21) Providers of international roaming services for calls made while roaming abroad as covered by this Regulation should have a period within which to adjust their retail prices voluntarily to comply with the maximum limits provided in this Regulation. It is appropriate to allow a period of six months for this purpose, to permit market players to make the necessary adaptations.

(22) Similarly, a maximum limit should be applied to the prices that roaming customers may be required to pay for the receipt of voice telephony calls while roaming abroad within the Community in order to ensure that those prices more closely reflect the cost of the provision of such a service, and to give customers greater certainty as to the charges they will incur when answering their mobile phone abroad.

(23) This Regulation should not prejudice innovative offerings to consumers which are more favourable than the maximum per minute charges contained in this Regulation.

(24) The pricing requirements in this Regulation should apply regardless of whether roaming customers have a pre-paid or a post-paid contract with their home provider, to ensure that all users of mobile voice telephony may benefit from its provisions.

(25) The average mobile termination rate for the purposes of this Regulation should be based on the information provided by the national regulatory authorities and published by the Commission on a periodical basis. Operators subject to obligations under this Regulation should be given a reasonable time within which to ensure that their prices remain within the maximum limits as modified by such publication.

(26) In order to improve the transparency of retail prices for making and receiving roaming calls within the Community and to help roaming customers make decisions on the use of their mobile telephones while abroad, providers of mobile telephony services should enable their roaming customers easily to obtain information on the roaming charges applicable to them in the visited Member State concerned, on request and free of charge. Transparency also requires that providers furnish information on roaming charges when subscriptions are taken out and that they also give their customers periodic updates on roaming charges as well as in the event of substantial changes.

(27) The national regulatory authorities which are responsible for carrying out tasks under the 2002 regulatory framework for electronic communications should have the powers needed to supervise and enforce the obligations in this Regulation within their territory. They should also monitor developments in the pricing of voice and data services for mobile customers when roaming within the Community, in particular in the outermost regions of the Community. They should ensure that up-to-date information on the application of this Regulation is made available to mobile users.

(28) Member States should provide for a system of sanctions to be applied in the event of breach of the provisions of this Regulation.

(29) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[17].

(30) Since the objectives of the proposed action, to establish a common mechanism to ensure that users of public mobile telephone networks when travelling within the Community do not pay excessive prices for international roaming services when making or receiving voice calls, thereby achieving a high level of consumer protection while safeguarding competition between mobile operators, cannot be achieved by the Member States in a secure, harmonised and timely manner and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in the same Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

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[17] OJ L 184, 17.7.1999, p. 23.

(31) This Regulation should be reviewed no later than two years after its entry into force, to ensure that it remains necessary and appropriate to the conditions prevailing in the electronic communications market at the time,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and Scope

1. This Regulation introduces a common mechanism, called the European Home Market Approach, for ensuring that users of public mobile telephone networks when travelling within the Community do not pay excessive prices for international roaming services when making calls and receiving calls, thereby achieving a high level of consumer protection while safeguarding competition between mobile operators. It lays down rules on the charges that may be levied by mobile operators for the provision of international roaming services for voice calls originating and terminating within the Community and applies both to charges levied between network operators at wholesale level and to charges levied by the home provider at retail level.

2. This Regulation constitutes a specific measure within the meaning of Article 1(5) of Directive 2002/21/EC as amended by this Regulation.

Article 2

Definitions

1. For the purposes of this Regulation, the definitions set out in Article 2 of Directive 2002/21/EC, Article 2 of Directive 2002/19/EC and Article 2 of Directive 2002/22/EC shall apply.

2. In addition to the definitions referred to in paragraph 1, the following definitions shall apply:

   (a) “home provider” means the undertaking that provides the roaming customer with terrestrial public mobile telephony services at retail level;

(b) “home network” means the terrestrial public mobile network located within a Member State and used by the home provider for the provision of terrestrial public mobile telephony services to the roaming customer;

(c) “international roaming” means the use of a mobile telephone or other device by a roaming customer to make or receive calls, while outside the Member State in which the customer’s home network is located, by means of arrangements between the operator of the home network and the operator of the visited network;

(d) “regulated roaming call” means a mobile voice telephony call made by a roaming customer, originating on a visited network and terminating on a public telephone network within the Community;

(e) “roaming customer” means a customer of a provider of terrestrial public mobile telephony services, by means of a terrestrial public mobile network situated in the Community, who uses a mobile telephone or other device to make or to receive calls on a visited network by means of arrangements between the operator of the home network and the operator of the visited network;

(f) “visited network” means a terrestrial public mobile telephony network situated in a Member State other than that of the home network and permitting a roaming customer to make or receive calls by reason of arrangements with the operator of the home network.

Article 3

Wholesale charges for the making of regulated roaming calls

The total wholesale charge that the operator of a visited network may levy from the operator of the roaming customer’s home network for the provision of a regulated roaming call, including *inter alia* origination, transit and termination, shall not exceed the applicable amount per minute determined in accordance with Annex I.

Article 4

Retail charges for the making of regulated roaming calls

Subject to Article 5, the total retail charge, excluding VAT, which a home provider may levy from its roaming customer for the provision of a regulated roaming call may not exceed 130% of the applicable maximum wholesale charge for that call determined in accordance with Annex I. The charge limits in this Article shall include any fixed elements associated with the provision of regulated roaming calls, such as call set up charges or opt-in fees.

Article 5

Timing of application of maximum retail charge limits for regulated roaming calls

The obligations in Article 4 shall take effect six months after the entry into force of this Regulation.

Article 6

Retail charges for the receipt of calls while roaming in the Community

The total retail charge, excluding VAT, which a home provider may levy from its roaming customer in respect of the receipt by that customer of voice telephony calls while roaming on a visited network shall not exceed, on a per minute basis, 130% of the average mobile termination rate published pursuant to Article 10(3). The charge limits in this Article shall include any fixed elements associated with the provision of regulated roaming calls, such as one-off charges or opt-in fees.

Article 7

Transparency of retail charges

1. Each home provider shall provide to its roaming customer on request personalised pricing information on the retail charges that apply to the making and receipt of calls by that customer in the visited Member State.

2. The customer may choose to make such a request by means of a mobile voice call or by sending an SMS (Short Message Service), in either case to a number designated for this purpose by the home provider, and may choose to receive the information either during the course of that call or by SMS (in the latter case without undue delay).

3. The information service referred to above shall be provided free of charge, both as regards the making of the request and the receipt of the information requested.

4. The personalised pricing information referred to in this Article shall be the charges applicable under the tariff scheme of the roaming customer concerned to the making

and receipt of calls on any visited network in the Member State in which the customer is roaming.

5. Home providers shall provide new customers with full information on applicable roaming charges when subscriptions are taken out. Home providers shall also provide updates on applicable roaming charges to their customers on a periodic basis and, in addition, each time there is a substantial change in these charges.

Article 8

Supervision and enforcement

1. National regulatory authorities shall monitor and supervise compliance with this Regulation within their territory.

2. National regulatory authorities shall have the power to require undertakings subject to obligations under this Regulation to supply all information relevant for the implementation and enforcement of this Regulation. These undertakings shall provide such information promptly on request and to the timescales and level of detail required by the national regulatory authority. The information requested by the national regulatory authority shall be proportionate to the performance of its task.

3. National regulatory authorities may intervene on their own initiative in order to ensure compliance with this Regulation.

4. Where a national regulatory authority finds that a breach of the obligations set out in this Regulation has occurred, it shall have the power to require the immediate cessation of such a breach.

5. National regulatory authorities shall make up-to-date information pertaining to the application of this Regulation publicly available in a manner that enables interested parties to have easy access to that information.

6. National regulatory authorities shall monitor developments in wholesale and retail prices for the provision to roaming customers of voice and data communications services, including the Short Message Service (SMS) and the Multimedia Messaging Service (MMS), in particular in the outermost regions of the Community, and shall communicate the results of such monitoring to the Commission on request.

7. Disputes between undertakings providing electronic communications networks and services concerning issues included in this Regulation shall be subject to the national dispute resolution procedures established in conformity with Articles 20 and 21 of Directive 2002/21/EC.

8. The out-of-court dispute resolution procedures established in conformity with Article 34 of Directive 2002/22/EC shall also be available to deal with unresolved disputes involving consumers and (if applicable under national law) other end-users concerning issues included in this Regulation.

Article 9

Penalties

The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission not later than six months following the entry into force of this Regulation and shall notify it without delay of any subsequent amendment affecting them.

Article 10

Average mobile termination rate

1. The average mobile termination rate shall be determined in accordance with the criteria and methodology set out in Annex II, on the basis of information communicated by the national regulatory authorities in accordance with paragraphs 2 and 4.

2. Each national regulatory authority shall communicate to the Commission on request, and within the time limit specified by the Commission in that request, the information specified in Annex II.

3. The Commission shall publish in the *Official Journal of the European Union*, on a regular basis, the average mobile termination rate determined in accordance with paragraphs 1, 2 and 4.

4. For the first publication of the average mobile termination rate following entry into force of this Regulation, the Commission may rely on the latest information consistent with Annex II which has been collected pursuant to Article 5(2) of Directive 2002/21/EC in fulfilment of its task of monitoring the implementation of the 2002 regulatory framework for electronic communications.

5. Undertakings subject to the requirements of this Regulation shall ensure that any changes to their charges which are required to ensure compliance with Articles 3, 4 and 6 take effect within two months from each publication pursuant to the preceding paragraphs of this Article.

6. Amendments necessary to adapt Annex II to technical or market developments shall be adopted by the Commission, acting in accordance with the procedure referred to in Article 13(3).

Article 11

Amendment to Directive 2002/21/EC

In Article 1 of Directive 2002/21/EC the following paragraph 5 is added:

"5. This Directive and the Specific Directives are without prejudice to any specific measure adopted for the regulation of international roaming charges for mobile voice telephony calls."

Article 12

Review procedure

The Commission shall review the functioning of this Regulation and report to the European Parliament and the Council no later than two years after the date of its entry into force. In its report the Commission shall include its reasoning regarding the continued need for regulation in the light of developments in the market and with regard to competition. For this purpose, the Commission may request information from the Member States and the national regulatory authorities, which shall be supplied without undue delay.

Article 13

Committee

1. The Commission shall be assisted by the Communications Committee, set up by Article 22 of Directive 2002/21/EC.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

   The period laid down in Article 5(6) of Decision 1999/468/EC shall be three months.

3. The Committee shall adopt its rules of procedure.

Article 14

Notification requirements

Member States shall notify to the Commission within two months of the entry into force of this Regulation the identity of the national regulatory authorities responsible for carrying out tasks under this Regulation.

Article 15

Implementation

The measures necessary for the implementation of this Regulation shall be adopted in accordance with the procedure referred to in Article 13(2).

Article 16

Entry into force

This Regulation shall enter into force on the day following the date of its publication in the *Official Journal of the European Union.*

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

ANNEX I

Wholesale charges for the making of regulated roaming calls referred to in Article 3

The total wholesale charges that the operator of a visited network may levy from the operator of the roaming customer's home network for the making of a regulated roaming call originating on that visited network shall not exceed, on a per-minute basis, an amount equal to the average mobile termination rate published pursuant to Article 10(3) multiplied:

a) by a factor of two, in the case of a regulated roaming call to a number assigned to a public telephone network in the Member State in which the visited network is located; or

b) by a factor of three, in the case of a regulated roaming call to a number assigned to a public telephone network in a Member State other than that in which the visited network is located.

The charge limits in this Annex shall include any fixed elements, such as call set-up charges.

ANNEX II

Methodology for the determination of the average mobile termination rate referred to in Article 10

(1) For the purposes of this Annex, the following terms shall have the following meanings:

(a) "National Weighted Average MTR" shall mean the average of the Per-SMP Operator MTRs, weighted on the basis of the number of Active Subscribers per SMP Operator;

(b) "Per-SMP Operator MTR" shall mean the average per-minute charge (including set up charges), based on a three-minute-call at peak rate, excluding VAT and in the national currency of the Member State concerned, for the termination of voice calls in its mobile network applied by each SMP Operator, as determined in accordance with a methodology approved by the national regulatory authority;

(c) "SMP Operator" shall mean an operator of terrestrial public mobile networks which has been designated as having significant market power in accordance with Article 16 of Directive 2002/21/EC in a market for the termination of calls on such network in the Member State concerned;

(d) "Active Subscribers per SMP Operator" shall mean the aggregate of the number of each SMP Operator's own active subscribers and the number of active subscribers of each other mobile provider which uses the SMP Operator's network for the termination of voice calls to its customers;

(e) "active subscribers" shall mean active mobile subscribers (both pre-paid and post-paid) determined in accordance with a methodology approved by the national regulatory authority.

(2) The average mobile termination rate published pursuant to Article 10(3) shall be the average of the National Weighted Average MTRs, itself weighted on the basis of the total number of active subscribers in each Member State. It shall be calculated using the information specified in paragraph (3) below which has been communicated to the Commission by the national regulatory authorities in accordance with a request pursuant to Article 10(2) or (4).

(3) The information to be communicated to the Commission by the national regulatory authorities shall be:

(a) the National Weighted Average MTR, and

(b) the sum of all the Active Subscribers per SMP Operator within their Member State,

in each case as at the date specified for this purpose by the Commission in its request.

(4) For Member States with a currency other than Euro, the Commission will convert the notified National Weighted Average MTR into Euro by using the exchange rate published in *the Official Journal of the European Union* for the date specified by the Commission under (3) above.