

The Consumer Voice in Europe

**PUBLIC CONSULTATION ON ROAMING CHARGES –
REVIEW AND EXTENSION OF CURRENT RULES**
BEUC's response



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Why it matters to consumers

Roaming fees are now history thanks to EU rules and this has had a clear benefit for consumers. Consumers frequently travel across Europe and they need to use their mobile devices to work, stay in touch or access online content. It is essential for them to be able to continue using their devices as if they were at home, wherever they are in the EU, without having to worry about incurring into disproportionate roaming costs.

Summary

Overall, Roam Like at Home has been a European-wide success for consumers and businesses alike¹. This success story has been due to the EU's regulatory intervention at retail and wholesale level. The continuation of roaming rules is not put into question. The aim of the review and extension of current roaming rules should be to achieve a true single market for digital and telecommunications services. The updated rules should not have an expiry date.

BEUC's comments on the European Commission's inception impact assessment for reviewing and prolonging the Roaming Regulation

BEUC – The European Consumer Organisation welcomes the opportunity to comment on the European Commission's inception impact assessment to extend and review the current EU roaming rules, as appropriate.

There is no doubt roaming rules cannot and must not expire

BEUC welcomes that the Commission intends to continue to pursue regulatory intervention on the abolition of roaming charges following the Body of European Regulators for Electronic Communications (BEREC)'s recommendations. BEUC also welcomes the consideration of a regulation as the chosen legislative instrument.

Roam Like at Home (RLAH) has been a clear EU success and is an essential element towards achieving a single market for digital and telecommunication services. RLAH is a success due to EU's regulatory intervention. It is a win for Europe as a whole. Thanks to these EU rules consumers can stay connected while travelling within the EU. It is also a win for mobile operators because it generates increased consumer demand that they monetise and thus increase their revenue and investments².

While it is important to review the rules from time to time, BEUC urges the European Commission not to set an expiry date for the rules as regulatory intervention has been proven essential to secure this EU success.

¹ See, for example the European Commission's report on the review of the roaming market, 29 November 2019, <https://ec.europa.eu/digital-single-market/en/news/commission-report-review-roaming-market>

² *Ibid.*

We urge caution against any reform that would imply a step back.

The benefit of the existing rules for consumers and the single market is clear, so the need to have these rules should not be put into question. When considering possible changes to the rules, it is crucial policy-makers propose targeted changes, not opening a general review of the regulation.

Room for improvement

The feedback that BEUC has received from its member organisations indicates a **general agreement that the rules work. Yet, the application of the rules is not perfect and there is room for targeted improvement.**

First, BEUC members have generally noticed **confusion among consumers on certain aspects**, e.g. about the scope of the rules and the distinction between the abolition of roaming charges and the imposition of intra-EU communications caps:

- **Regarding the scope of application of the rules.** For example, BEUC's German member vzbv reported that consumers are often not aware that the Roaming Regulation does not apply at sea or in planes. vzbv even received a complaint from a consumer who had received a €11,000 bill.³ Similarly, our Belgian member Test Achats/Test Aankoop received complaints from consumers who had some problems with the interpretations of the RLAH Regulation, particularly with regards to which countries were covered in the scope beyond EU countries.
- **Regarding the distinction between roaming and intra-EU communications.** In the long term, this confusion can solely be resolved by the abolishment of price differences on the basis of a call being done domestically or to another country. The EU should ensure the price of an electronic communication service is the same regardless of whether the service is delivered domestically or whether it crosses a border and terminates in a different EU country. Telecom providers should only charge the justifiable and objective additional cost (plus reasonable profit margin) of a phone call or text message to a recipient customer in another country.

Secondly, BEREC has done comprehensive and detailed work regarding complaints received by National Regulatory Authorities (NRAs) and issues they have noticed in both the market and the regulation. Consumer organisations have also received **several consumer complaints**, highlighting some compliance and enforcement issues related *inter alia* to zero rating, transparency and inadvertent roaming in a non-EU network while being inside the EU territory. For example, in:

- **Portugal**, our member DECO received complaints about zero rating programmes not respecting roaming rules.
- **Greece**, our member EKPIZO received a number of complaints for problems related to the quality of the network and for insufficient information regarding the charges for exceeding limit usages of free data roaming in border areas.
- **Germany**, our member vzbv reported that most operators switched the tariff plans automatically to RLAH when it entered into application, as required by law. Consumers who wanted alternative tariffs had to choose them deliberately.

³ Vzbv, Kostenfalle: Telefónica-Kunden gefährdet, <https://www.vzbv.de/pressemitteilung/kostenfalle-telefonica-kunden-gefaehrdet>

Telecom provider O2 however did not apply RLAH by default. Therefore, vzbv issued O2 a legal warning⁴. Unfortunately, the national regulatory authority Bundesnetzagentur did not back vzbv's claim. The case is now pending before the CJEU⁵. The question the CJEU has to answer is whether or not Articles 6a and 6e(3) of Regulation (EU) 531/2012 are to be interpreted, with effect from 15 June 2017, as meaning that mobile telephone operators must automatically switch all customers to the regulated tariff under Article 6a of that Regulation, irrespective of whether those customers previously had a regulated tariff or a special so-called 'alternative roaming tariff'.

- **Belgium**, our member Test Achats/Test Aankoop highlighted that one virtual mobile operator was fined €25,000 by the Belgian NRA⁶ for not respecting the Article 6bis and 6 sections, part 3 of the Roaming regulation.
- **Sweden**: our member Sveriges Konsumenter found that some consumers experienced slower internet speeds while roaming in Belgium or Italy.

Therefore, there are **some issues which require consideration during the roaming regulation review from a consumer perspective**, particularly:

- **Transparency and consumer awareness.** It is remarkable that 84% of the responding NRAs "said that they had received complaints on transparency issues. This is almost the same compared to the previous reporting period. However, compared to 2018 there has been an increase regarding the amount of complaints to NRAs about inadvertently roaming on a non-EU network while remaining on EU territory, the quality of service, data speeds while roaming, unawareness that roaming calls are charged as off-net calls and about roaming when being on board of planes and ships, which is not covered by the Roaming Regulation"⁷.

Against this background, BEUC encourages the Commission to strengthen the rules on transparency, including addressing the lack of transparency regarding value-added services' excessive charges and better information requirements on specific limits on the use of data per tariff when roaming. For example, in Portugal, our member DECO highlights that the use of data in roaming is limited by a Fair Use Policy (FUP) when the price per MB is below the threshold set (€ 3.5 / GB in 2020, excluding VAT). This means that, even with regulations, some Portuguese consumers are unable to use their domestic data plafond entirely outside the country. In this respect, there is a need for better information on the part of operators about applicable limits per tariff. Currently, some operators tend to communicate about this in a generic way, e.g. by saying that a "FUP can be applied", by referring to customer sections or by saying that RLAH can be limited. This is not a transparent way of communicating information.

⁴ See, notably the response to question #9 of the European Commission's FAQ on roaming rules, available at <https://ec.europa.eu/digital-single-market/en/fag/question-and-answers-roaming>

⁵ Case C-539/19, available at

[http://curia.europa.eu/juris/fiche.jsf?ogp=&for=&mat=or&lgrec=de&jqe=&td=%3BALL&jur=C%2CT%2CF&id=C%3B539%3B19%3BRP%3B1%3BP%3B1%3BC2019%2F0539%2FP&num=C-539%252F19&dates=&pcs=Oor&lg=&pro=&nat=or&cit=none%252CC%252CC1%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&language=en&avg=&cid=8873008](http://curia.europa.eu/juris/fiche.jsf?ogp=&for=&mat=or&lgrec=de&jqe=&td=%3BALL&jur=C%2CT%2CF&id=C%3B539%3B19%3BRP%3B1%3BP%3B1%3BC2019%2F0539%2FP&num=C-539%252F19&dates=&pcs=Oor&lg=&pro=&nat=or&cit=none%252CC%252CC1%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&language=en&avg=&cid=8873008)

⁶ <https://ibpt.be/consommateurs/publication/libpt-impose-a-lycamobile-une-amende-pour-non-respect-des-regles-en-matiere-ditinerance>

⁷ 7th BEREC report on transparency and comparability of international roaming tariffs, 5 December 2019, https://berec.europa.eu/eng/document_register/subject_matter/berec/reports/8901-7th-berec-report-on-transparency-and-comparability-of-international-roaming-tariffs, page 3.

- **Quality of service**, e.g. an operator offering 3G in the country where the consumer is travelling – while 4G would be available and when in the consumer’s country of origin s/he enjoys 4G. This has been an issue recognised by both the European Commission and BEREC. This concern seems to be corroborated by BEREC’s Report on Transparency and Comparability of International Roaming Tariffs from December 2019, where BEREC indicated that "regarding availability of 4G data roaming services, 46 % of the operators stated that they offer 3G roaming services in the EU/EEA even where 4G would be available and 61 % of those operators that only offer 3G services despite 4G being available are not planning to provide 4G roaming services by the end of 2019 or don’t have any plans at all"⁸.

As the Commission states, quality of service “is an integral part of the roaming service. While the Roaming Regulation does not include any explicit obligation on QoS as such, it mandates that the user has access to the same service abroad in the EU/EEA for the same price”. For the sake of clarity, the Commission should propose a targeted amendment ensuring a clear obligation on quality of service and, in line with BEREC’s Opinion on the functioning of the roaming market⁹, more clarify around data speed provided while roaming. Otherwise, the promise to RLAH will keep not being fulfilled.

- **Fair use policies.** As the European Commission’s report on the review of the roaming market showed, “the proportion of customers who actually exceed the limits of any fair use policy remains very limited”¹⁰. Therefore, we ask the European Commission to consider reviewing these rules, making them clearer and less restrictive so consumers can fully enjoy RLAH.
- **Wholesale regulation.** BEREC data shows that the costs at wholesale level are way below the caps determined by the legislator. BEREC’s supplementary analysis on wholesale roaming costs¹¹ indicates that “the maximum unit costs for voice roaming services are 40 % lower than the price cap imposed and the minimum unit costs are 60 % lower than the cap applicable in the first half of 2022”. Regarding SMS roaming services, BEREC calculates a 70 % difference between the imposed wholesale cap and “the maximum and minimum costs for SMS”.

Consequently, BEUC recommends the European Commission to lower the wholesale caps, as this has not only an impact at wholesale level, but also an impact on retail prices. Without an ambitious wholesale market reform, there is a risk that consumers will pay for the negative consequences: mobile providers could increase domestic prices or stop providing roaming services altogether, hampering competition. The lower the wholesale caps, the less restrictive fair use policies can be for consumers. When a consumer travels, if the domestic operator has higher wholesale costs to pay for the roaming use, it will have an incentive to limit the consumer’s Roam Like at Home right as much as possible. Instead, if wholesale caps are low, the risk for the home operator decreases, and so the operator can be more permissive with its Fair Use Policies. It is therefore crucial that alongside defining consumer-friendly rules with fair use policies, an ambitious decrease of wholesale caps is agreed in order to enable consumers to exercise their RLAH right.

⁸ *Ibid*, page 2.

⁹ Available at https://berec.europa.eu/eng/document_register/subject_matter/berec/opinions/8595-berec-opinion-on-the-functioning-of-the-roaming-market-as-input-to-ec-evaluation

¹⁰ Available at <https://ec.europa.eu/digital-single-market/en/news/commission-report-review-roaming-market>, page 8.

¹¹ BEREC supplementary analysis on wholesale roaming costs, 19 September 2019, available at https://berec.europa.eu/eng/document_register/subject_matter/berec/opinions/8756-berec-supplementary-analysis-on-wholesale-roaming-costs

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