

The Consumer Voice in Europe

THE REVIEW AND PROLONGATION OF THE EU ROAMING REGULATION

BEUC response to the public consultation – Complementary paper



Contact: Maryant Fernández – digital@beuc.eu

BUREAU EUROPÉEN DES UNIONS DE CONSOMMATEURS AISBL | DER EUROPÄISCHE VERBRAUCHERVERBAND

Rue d'Arlon 80, B-1040 Brussels • Tel. +32 (0)2 743 15 90 • www.twitter.com/beuc • www.beuc.eu

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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 watch content online. It is essential for consumers to be able to continue using their devices and services wherever they are in the EU/EEA as if they were at home, without having to worry about borders or incurring into disproportionate roaming costs. This is only possible if current rules are maintained and targeted amendments are made to solve identified shortcomings.

Summary

BEUC – The European Consumer Organisation welcomes the opportunity to respond to the European Commission’s consultation on the review and prolongation of the EU roaming regulation. This submission complements BEUC’s responses to the questionnaire and roadmap consultation¹.

Considering roaming rules are set to expire in June 2022, in this paper BEUC presents its recommendations to prolong and review EU roaming rules with consumer interests at heart.

BEUC’s recommendations:

- 1. Roaming rules must continue;*
- 2. The EU must keep on moving forward towards a real digital and telecoms single market;*
- 3. Targeted amendments should be introduced to improve rules about transparency, cut-off limits, quality of service and functioning of the wholesale market and to allow consumers to truly roam like at home.*

1. Roaming rules must continue

There is no doubt about it. All relevant reports produced by the Body of European Regulators for Electronic Communications (BEREC), the European Commission and the European Parliament show that the EU’s roaming rules have benefitted both telecom markets and consumers. Roaming rules are one of the most widely recognised EU successes by consumers. These rules have led to a significant increase of consumption of calls, SMS and data when consumers travel. For example, BEREC reports that the European Economic Area (EEA) “average roaming consumption of data services increased by 800 % from Q3 2016 to Q3 2019 (from 60 MB per month to 540 MB per month per roaming subscriber).²

¹ http://www.beuc.eu/publications/beuc-x-2020-036_public_consultation_on_roaming_charges.pdf

² BEREC input on EC request for the preparation of the legislative proposal for the new roaming regulations, 30 June 2020, page 5, https://berec.europa.eu/eng/document_register/subject_matter/berec/opinions/9373-berec-input-on-ec-request-for-the-preparation-of-the-legislative-proposal-for-the-new-roaming-regulations

2. The EU must continue moving forward towards a real digital and telecoms single market

BEUC cautions against any review of the roaming rules that would imply a step back from current achievements and protections for consumers both at retail and wholesale level.

The success of Roam Like at Home (RLAH) depends on regulation. That has been clear throughout the years. However, in the consultation the European Commission sometimes refers to the EU roaming rules as an “EU intervention”. The Commission should rather see them as necessary rules to achieve a single market for calls, data and SMS. The CJEU confirmed that the EU can enact pricing regulation. The market alone or Member States acting individually could not have delivered RLAH. In the absence of regulation at wholesale level, competition could have been suppressed and ultimately consumers would have borne the costs.

BEUC is concerned that the consultation includes a question about the need of wholesale rules. Lifting EU wholesale regulation should be out of the question. Eliminating this crucial part of the rules would contravene BEREC’s, National Regulatory Authorities (NRAs)’ and the Commission’s own recommendations. It would imply a step backwards towards a real single telecom and digital market. Without adequate wholesale price regulation consumers pay for the negative consequences: mobile providers could increase domestic prices or stop providing roaming services altogether, hampering competition. BEUC recommends the Commission to focus on improving the situation for smaller players (typically but not only MVNOS - mobile virtual network providers), which are struggling with high wholesale costs. The resulting anti-competitive effects may harm consumers. An easy fix of current wholesale rules is to lower the wholesale caps.

Finally, the public consultation asks about possibilities for rules’ simplification or “burden reduction”. BEUC urges caution about any step that would imply moving backwards in the protection of and benefits achieved for consumers. Consumer interests need to be put first when proposing targeted amendments to current roaming rules.

3. There is room for improvement

There is room for improvement in terms of transparency, cut-off limits, quality of service and the functioning of the wholesale market as well as the actual implementation of the roam like at home rule. We recommend the EU to adopt several targeted amendments to the current roaming rules.

A real roam like at home

Just like BEREC, BEUC supports that “it must be made clear that the home operator does not alter the conditions during roaming in the European Economic Area (EEA)”³. Consumers should be able to replicate their domestic consumption while being abroad, benefitting from the same prices and terms as if they were home.

In addition, 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

³ BEREC input on EC request for the preparation of the legislative proposal for the new roaming regulations, 30 June 2020, page 2, https://berec.europa.eu/eng/document_register/subject_matter/berec/opinions/9373-berec-input-on-ec-request-for-the-preparation-of-the-legislative-proposal-for-the-new-roaming-regulations

remains very limited”⁴. Telecom companies have made limited use of fair use policies. This puts the initial justification of this approach (i.e. considering consumers would act in bad faith by default) into question. As a matter of principle, to genuinely benefit from RLAH little exceptions should exist to truly achieve a real single market of communications. The use of fair use policies to limit RLAH can only be a temporary measure to transition into a fully RLAH-based market. Fair use policies should disappear once wholesale caps have been further reduced. 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 an ambitious decrease of wholesale caps is agreed in order to enable consumers to exercise their RLAH right.

Transparency and cut-off limits

Operators do not always communicate roaming abolition exceptions clearly, which has led to several BEUC members receiving consumer complaints. We also recall that the big majority of NRAs have reported that they have also received complaints about transparency issues⁵. To avoid complaints particularly about bill shocks, BEUC proposes to strengthen the rules on transparency. These should at least include obligations on:

- **Prices applicable while on roaming on boats and planes.** Several BEUC members have reported consumer complaints about bill shocks because they were unaware that RLAH did not apply to networks onboard ships and planes. For example, our German member organisation vzbv received a complaint from a consumer who had received a €11,000 bill⁶. In addition to obligations regarding costs applicable, cut-off limits should apply to avoid exorbitant bills⁷.
- **Value-added services.** BEUC welcomes that the Commission asks questions about the need to regulate value-added services via the Roaming Regulation as several BEUC members have received complaints from consumers about surprising bills related to them. BEUC Slovenian member ZPS reports that Telekom Slovenije, for instance, has a very poor way of charging value-added service calls. Depending on the number (they are all listed on a 174-page document⁸), consumers have to pay €0.80, 2.44 or 6.10 per minute. This is non-transparent and confusing for consumers. Furthermore, there are several numbers on the list that look like ‘normal’ numbers considering the length and digits order. In other countries value-added service numbers are not easily distinguishable from ‘normal’ numbers. This is the case of Estonia. In Spain, for example, the government has announced plans to put an end to 902 numbers, ending excessive bills for consumers⁹.

At a minimum, providers must clearly inform about specific pricing upfront, whenever consumers use value-added services. BEUC also encourages the Commission to introduce a rule that value-added services must cost the same for roaming consumers as nationals of that EU/EEA country. When using a home

⁴ Available at <https://ec.europa.eu/digital-single-market/en/news/commission-report-review-roaming-market>, page 8.

⁵ 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.

⁶ <https://www.vzbv.de/pressemitteilung/kostenfalle-telefonica-kunden-gefaehrdetv>

⁷ This measure is also supported by BEREC’s input on EC request for the preparation of the legislative proposal for the new roaming regulations, 30 June 2020, page 12, https://berec.europa.eu/eng/document_register/subject_matter/berec/opinions/9373-berec-input-on-ec-request-for-the-preparation-of-the-legislative-proposal-for-the-new-roaming-regulations

⁸ For reference, the document can be found at https://www.telekom.si/Documents/Posebne_drazje-stevilke-v-tujini.pdf

⁹ <https://www.ocu.org/tecnologia/internet-telefonía/noticias/fin-numeros-902>
<https://www.ocu.org/organizacion/prensa/notas-de-prensa/2020/eliminacion-902>

value-added service, the cost should be the same when at home – should the number be reachable.

BEREC's proposal for an opt-in is a good starting point – if the opt-in is easy, clear, free and unambiguous. However, this option neither contributes to reaching a real single market nor resolves billing shocks as some of these services are essential for some consumers and therefore are obliged to resort to them. E.g. calling a customer service number, asking for a towing vehicle when the consumer experiences a problem with their car in the highway; or dialling a passenger assistance service number so persons with disabilities can travel. If the EU is to build a real single market and fully abolish roaming costs, it should adopt the rule that consumers that are roaming within the EU/EEA will pay the same amount for value-added services like locals do and ensure that consumers keep paying the same price as at home when resorting to value-added services from their home country when travelling within the EU/EEA.

- **Inadvertent roaming on non-EU/EEA networks and high prices in non-EU/EEA countries.** This issue has been reported to both NRAs and consumer organisations from countries that are neighbours to non-EU/EEA countries. Consumers have been surprised to be charged for inadvertent roaming while being inside the EU/EEA territory. This unfortunate situation can be further resolved by having an opt-in obligation for consumers to join such non-EU/EEA network for consumers who do not have a specific tariff for such country in advance. This opt-in rule would protect consumers who think they are still in the EU. It would also protect those consumers who are staying within EU borders but – without realising it – see their network inadvertently change to a non-EU neighbouring country (e.g. because they have their mobile device in their pocket). It would also protect those consumers who think that roaming still applies, e.g. consumers travelling through France or Austria and passing by Switzerland by car. This opt-in requirement would be added to swift and clear minimum information requirements for warning messages and cut-off limits to avoid bill shocks.

In addition, prices for calling, texting or uploading/downloading data when abroad are so high as to be prohibitive. Therefore, BEUC also recommends the European Commission to also work closely with non-EU/EEA countries to reach roaming agreements or, at the very least, promote competition rules that bring down prices for consumers¹⁰.

Quality of service

Several BEUC members report that the quality of service experienced by consumers when travelling is not always the same as when at home, even when the same level of quality should be available. For example, in 2018 teltarif.de (a German tech website) did a test on quality of service while roaming in the UK. They found that transmission speeds were conspicuously poor. This was particularly true when smartphones or tablets were running into the LTE network¹¹. Some telecom providers have even admitted lowering the quality of service when consumers roam¹². BEREC also reported concerning figures which require additional regulatory intervention:

¹⁰ https://www.beuc.eu/publications/beuc-x-2019-014_wto_e-commerce_negotiations_-_beuc_recommendations.pdf

¹¹ <https://www.teltarif.de/o2-uk-daten-roaming/news/71233.html>

¹² See, for example <https://www.iphone-ticker.de/o2-drosselt-roaming-geschwindigkeiten-115030/>

- “46 % of the operators report to 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 do not have any plans at all.”¹³ And yet, “there are no operators/MNOs in the EEA without 4G access technology implemented in their network”.¹⁴
- “4G roaming wholesale access was refused for 3 MVNOs by their host operator. Even though the number of MVNOs who reported these problems is not particularly high, BEREC considers this behaviour as problematic”.¹⁵

As the Commission itself recognised in its review report¹⁶, quality of service is an integral part of the roaming service. While the Roaming Regulation does not include any explicit obligation on quality of service as such, the Commission admits 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, BEUC recommends proposing a targeted amendment ensuring a clear obligation on quality of service and, in line with BEREC’s opinion on the functioning of the roaming market, more clarity around data speed and other quality of service parameters provided while roaming.

Transparency obligations about quality of service limitations in the country where the consumer is roaming will not ensure that consumers would enjoy the same quality of service while at home. As BEREC data shows, some operators do not have the intention to provide 4G when receiving consumers from other countries. This clearly shows it is a business decision not to provide a high quality of service. The situation is likely to worsen with 5G.

Functioning of the wholesale market

Competition is an essential element to benefit consumers. The current rules are better than what Member States would have achieved alone or better than no regulation at all. However, this does not mean that wholesale rules are delivering the maximum they could achieve. It also does not mean current rules are ensuring wholesale markets are sustainable or competitive enough so as to benefit consumers.

When in the consultation the Commission asks about whether the situation around the wholesale market depends on the Member State, we replied “it does not depend on the Member State”. This is not to say that there are no country differences, but to emphasise that the review of the caps should apply to the whole EU/EEA.

When considering sustainability and competitiveness at wholesale level, BEUC misses available options in the consultation to explain that these elements depend on the existence of regulation in the first place and on low, affordable and fair wholesale prices. If wholesale caps are low, the costs for the home operator decrease. Therefore, the operator can be more permissive with its fair use policies and would not need a sustainability derogation. 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 fully exercise their RLAH right. BEREC’s supplementary analysis on wholesale roaming costs¹⁷ indicates that “the maximum unit costs for voice roaming

¹³ BEREC’s input on EC request for the preparation of the legislative proposal for the new roaming regulations, 30 June 2020, page 13.

¹⁴ Ibid, page 16

¹⁵ Ibid, page 18.

¹⁶ <https://ec.europa.eu/digital-single-market/en/news/commission-report-review-roaming-market>

¹⁷ 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

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". The evidence is clear regarding SMS roaming services too. BEREC calculates a 70 % difference between the imposed wholesale cap and "the maximum and minimum costs for SMS". For data, "BEREC determines that the maximum unit costs for data roaming services for 2022 are 25% lower than the caps and the minimum unit costs are 50% lower than the caps".

Finally, we would like to comment on machine-to-machine communications (M2M) and internet of things (IoT). While the Commission questionnaire is targeted at industry and at wholesale level, we would like to point out that IoT is not limited to industrial M2M communications. Therefore, wholesale access should also cover IoT. Ultimately, consumers need to be able to use their IoT devices seemingly across the EU/EEA.

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