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► **B** ► **M1** REGULATION (EU) 2015/2120 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 25 November 2015

laying down measures concerning open internet access and retail charges for regulated intra-EU communications and amending Directive 2002/22/EC and Regulation (EU) No 531/2012 ◀

(Text with EEA relevance)

(OJ L 310, 26.11.2015, p. 1)

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**REGULATION (EU) 2015/2120 OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL**

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**laying down measures concerning open internet access and retail
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Directive 2002/22/EC and Regulation (EU) No 531/2012**

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(Text with EEA relevance)

Article 1

Subject matter and scope

1. This Regulation establishes common rules to safeguard equal and non-discriminatory treatment of traffic in the provision of internet access services and related end-users' rights.
2. This Regulation sets up a new retail pricing mechanism for Union-wide regulated roaming services in order to abolish retail roaming surcharges without distorting domestic and visited markets.

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3. This Regulation also lays down common rules to ensure that consumers are not charged excessive prices for making number-based interpersonal communications originating in the Member State of the consumer's domestic provider and terminating at any fixed or mobile number in another Member State.

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Article 2

Definitions

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

The following definitions also apply:

- (1) 'provider of electronic communications to the public' means an undertaking providing public communications networks or publicly available electronic communications services;
- (2) 'internet access service' means a publicly available electronic communications service that provides access to the internet, and thereby connectivity to virtually all end points of the internet, irrespective of the network technology and terminal equipment used;

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- (3) 'regulated intra-EU communications' means any number-based interpersonal communications service originating in the Member State of the consumer's domestic provider and terminating at any fixed or mobile number of the national numbering plan of another Member State, and which is charged wholly or partly based on actual consumption;

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- (4) ‘number-based interpersonal communications service’ means number-based interpersonal communications service as defined in point (6) of Article 2 of Directive (EU) 2018/1972 of the European Parliament and of the Council ⁽¹⁾.

▼ B*Article 3***Safeguarding of open internet access**

1. End-users shall have the right to access and distribute information and content, use and provide applications and services, and use terminal equipment of their choice, irrespective of the end-user’s or provider’s location or the location, origin or destination of the information, content, application or service, via their internet access service.

This paragraph is without prejudice to Union law, or national law that complies with Union law, related to the lawfulness of the content, applications or services.

2. Agreements between providers of internet access services and end-users on commercial and technical conditions and the characteristics of internet access services such as price, data volumes or speed, and any commercial practices conducted by providers of internet access services, shall not limit the exercise of the rights of end-users laid down in paragraph 1.

3. Providers of internet access services shall treat all traffic equally, when providing internet access services, without discrimination, restriction or interference, and irrespective of the sender and receiver, the content accessed or distributed, the applications or services used or provided, or the terminal equipment used.

The first subparagraph shall not prevent providers of internet access services from implementing reasonable traffic management measures. In order to be deemed to be reasonable, such measures shall be transparent, non-discriminatory and proportionate, and shall not be based on commercial considerations but on objectively different technical quality of service requirements of specific categories of traffic. Such measures shall not monitor the specific content and shall not be maintained for longer than necessary.

Providers of internet access services shall not engage in traffic management measures going beyond those set out in the second subparagraph, and in particular shall not block, slow down, alter, restrict, interfere with, degrade or discriminate between specific content, applications or services, or specific categories thereof, except as necessary, and only for as long as necessary, in order to:

- (a) comply with Union legislative acts, or national legislation that complies with Union law, to which the provider of internet access services is subject, or with measures that comply with Union law

⁽¹⁾ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36).

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giving effect to such Union legislative acts or national legislation, including with orders by courts or public authorities vested with relevant powers;

- (b) preserve the integrity and security of the network, of services provided via that network, and of the terminal equipment of end-users;
- (c) prevent impending network congestion and mitigate the effects of exceptional or temporary network congestion, provided that equivalent categories of traffic are treated equally.

4. Any traffic management measure may entail processing of personal data only if such processing is necessary and proportionate to achieve the objectives set out in paragraph 3. Such processing shall be carried out in accordance with Directive 95/46/EC of the European Parliament and of the Council ⁽¹⁾. Traffic management measures shall also comply with Directive 2002/58/EC of the European Parliament and of the Council ⁽²⁾.

5. Providers of electronic communications to the public, including providers of internet access services, and providers of content, applications and services shall be free to offer services other than internet access services which are optimised for specific content, applications or services, or a combination thereof, where the optimisation is necessary in order to meet requirements of the content, applications or services for a specific level of quality.

Providers of electronic communications to the public, including providers of internet access services, may offer or facilitate such services only if the network capacity is sufficient to provide them in addition to any internet access services provided. Such services shall not be usable or offered as a replacement for internet access services, and shall not be to the detriment of the availability or general quality of internet access services for end-users.

Article 4

Transparency measures for ensuring open internet access

1. Providers of internet access services shall ensure that any contract which includes internet access services specifies at least the following:

- (a) information on how traffic management measures applied by that provider could impact on the quality of the internet access services, on the privacy of end-users and on the protection of their personal data;

⁽¹⁾ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

⁽²⁾ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

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- (b) a clear and comprehensible explanation as to how any volume limitation, speed and other quality of service parameters may in practice have an impact on internet access services, and in particular on the use of content, applications and services;
- (c) a clear and comprehensible explanation of how any services referred to in Article 3(5) to which the end-user subscribes might in practice have an impact on the internet access services provided to that end-user;
- (d) a clear and comprehensible explanation of the minimum, normally available, maximum and advertised download and upload speed of the internet access services in the case of fixed networks, or of the estimated maximum and advertised download and upload speed of the internet access services in the case of mobile networks, and how significant deviations from the respective advertised download and upload speeds could impact the exercise of the end-users' rights laid down in Article 3(1);
- (e) a clear and comprehensible explanation of the remedies available to the consumer in accordance with national law in the event of any continuous or regularly recurring discrepancy between the actual performance of the internet access service regarding speed or other quality of service parameters and the performance indicated in accordance with points (a) to (d).

Providers of internet access services shall publish the information referred to in the first subparagraph.

2. Providers of internet access services shall put in place transparent, simple and efficient procedures to address complaints of end-users relating to the rights and obligations laid down in Article 3 and paragraph 1 of this Article.

3. The requirements laid down in paragraphs 1 and 2 are in addition to those provided for in Directive 2002/22/EC and shall not prevent Member States from maintaining or introducing additional monitoring, information and transparency requirements, including those concerning the content, form and manner of the information to be published. Those requirements shall comply with this Regulation and the relevant provisions of Directives 2002/21/EC and 2002/22/EC.

4. Any significant discrepancy, continuous or regularly recurring, between the actual performance of the internet access service regarding speed or other quality of service parameters and the performance indicated by the provider of internet access services in accordance with points (a) to (d) of paragraph 1 shall, where the relevant facts are established by a monitoring mechanism certified by the national regulatory authority, be deemed to constitute non-conformity of performance for the purposes of triggering the remedies available to the consumer in accordance with national law.

This paragraph shall apply only to contracts concluded or renewed from 29 November 2015.

▼B*Article 5***Supervision and enforcement**

1. National regulatory authorities shall closely monitor and ensure compliance with Articles 3 and 4, and shall promote the continued availability of non-discriminatory internet access services at levels of quality that reflect advances in technology. For those purposes, national regulatory authorities may impose requirements concerning technical characteristics, minimum quality of service requirements and other appropriate and necessary measures on one or more providers of electronic communications to the public, including providers of internet access services.

National regulatory authorities shall publish reports on an annual basis regarding their monitoring and findings, and provide those reports to the Commission and to BEREC.

2. At the request of the national regulatory authority, providers of electronic communications to the public, including providers of internet access services, shall make available to that national regulatory authority information relevant to the obligations set out in Articles 3 and 4, in particular information concerning the management of their network capacity and traffic, as well as justifications for any traffic management measures applied. Those providers shall provide the requested information in accordance with the time-limits and the level of detail required by the national regulatory authority.

3. By 30 August 2016, in order to contribute to the consistent application of this Regulation, BEREC shall, after consulting stakeholders and in close cooperation with the Commission, issue guidelines for the implementation of the obligations of national regulatory authorities under this Article.

4. This Article is without prejudice to the tasks assigned by Member States to the national regulatory authorities or to other competent authorities in compliance with Union law.

▼M1*Article 5a***Retail charges for regulated intra-EU communications**

1. From 15 May 2019, any retail price (excluding VAT) charged to consumers for regulated intra-EU communications shall not exceed EUR 0,19 per minute for calls and EUR 0,06 per SMS message.

2. Notwithstanding the obligations laid down in paragraph 1, providers of regulated intra-EU communications may additionally offer, and consumers may expressly choose, a tariff for international communications including regulated intra-EU communications different from that set in accordance with paragraph 1, by virtue of which consumers benefit from a different tariff for regulated intra-EU communications than they would have been accorded in the absence of such a choice. Before consumers choose such a different tariff, the provider of regulated intra-EU communications shall inform them of the nature of the advantages which would thereby be lost.

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3. Where a tariff for regulated intra-EU communications as referred to in paragraph 2 exceeds the caps laid down in paragraph 1, consumers who have not confirmed or expressed, within a period of two months from 15 May 2019, a choice for any tariff as referred to in paragraph 2, shall automatically be provided with the tariffs laid down in paragraph 1.

4. Consumers may switch from or back to the tariffs laid down in paragraph 1 within one working day of receipt of the request by the provider, free of charge and providers shall ensure that such a switch does not entail conditions or restrictions with regard to elements of the subscriptions other than regulated intra-EU communications.

5. Where the maximum prices referred to in paragraph 1 are denominated in a currency other than the euro, the initial limits shall be determined in those currencies by applying the average of the reference exchange rates published on 15 January, 15 February and 15 March 2019 by the European Central Bank in the Official Journal of the European Union. The limits in currencies other than the euro shall be revised annually from 2020. The annually revised limits in those currencies shall apply from 15 May using the average of the reference exchange rates published on 15 January, 15 February and 15 March of the same year.

6. National regulatory authorities shall monitor the market and price developments for regulated intra-EU communications and shall report to the Commission.

Where a provider of regulated intra-EU communications establishes that, due to specific and exceptional circumstances distinguishing it from most other Union providers, the application of the cap referred to in paragraph 1 would have significant impact on that provider's capacity to sustain its existing prices for domestic communications, a national regulatory authority may, upon that provider's request, grant a derogation from paragraph 1 only to the extent necessary and for a renewable period of one year. The assessment of the sustainability of the domestic charging model shall be based on relevant objective factors specific to the provider of regulated intra-EU communications, as well as the level of domestic prices and revenues.

Where the applicant provider has discharged the applicable evidentiary burden, the national regulatory authority shall determine the maximum price level in excess of one or both of the caps set out in paragraph 1 which would be indispensable in order to ensure the sustainability of the provider's domestic charging model. BEREC shall publish guidelines on the parameters to be taken into account by national regulatory authorities in their assessments.

▼ B*Article 6***Penalties**

Member States shall lay down the rules on penalties applicable to infringements of Articles 3, 4 and 5 and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall

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notify the Commission of those rules and measures by 30 April 2016 and shall notify the Commission without delay of any subsequent amendment affecting them.

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Member States shall lay down the rules on penalties applicable to infringements of Article 5a and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify the Commission of the rules and measures laid down to ensure the implementation of Article 5a by 15 May 2019 and shall notify the Commission without delay of any subsequent amendment affecting them.

▼B*Article 7***Amendments to Regulation (EU) No 531/2012**

Regulation (EU) No 531/2012 is amended as follows:

(1) In Article 2, paragraph 2 is amended as follows:

(a) points (i), (l) and (n) are deleted;

(b) the following points are added:

(r) ‘domestic retail price’ means a roaming provider’s domestic retail per-unit charge applicable to calls made and SMS messages sent (both originating and terminating on different public communications networks within the same Member State), and to data consumed by a customer; in the event that there is no specific domestic retail per-unit charge, the domestic retail price shall be deemed to be the same charging mechanism as that applied to the customer for calls made and SMS messages sent (both originating and terminating on different public communications networks within the same Member State), and data consumed in that customer’s Member State;

(s) ‘separate sale of regulated retail data roaming services’ means the provision of regulated data roaming services provided to roaming customers directly on a visited network by an alternative roaming provider.’.

(2) In Article 3, paragraph 6 is replaced by the following:

‘6. The reference offer referred to in paragraph 5 shall be sufficiently detailed and shall include all components necessary for wholesale roaming access as referred to in paragraph 3, providing a description of the offerings relevant for direct wholesale roaming access and wholesale roaming resale access, and the associated terms and conditions. That reference offer may include conditions to prevent permanent roaming or anomalous or abusive use of

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wholesale roaming access for purposes other than the provision of regulated roaming services to roaming providers' customers while the latter are periodically travelling within the Union. If necessary, national regulatory authorities shall impose changes to reference offers to give effect to obligations laid down in this Article.'.

(3) Article 4 is amended as follows:

(a) the title is replaced by the following:

'Separate sale of regulated retail data roaming services';

(b) in paragraph 1, the first subparagraph is deleted;

(c) paragraphs 4 and 5 are deleted.

(4) Article 5 is amended as follows:

(a) the title is replaced by the following:

'Implementation of separate sale of regulated retail data roaming services';

(b) paragraph 1 is replaced by the following:

'1. Domestic providers shall implement the obligation related to the separate sale of regulated retail data roaming services provided for in Article 4 so that roaming customers can use separate regulated data roaming services. Domestic providers shall meet all reasonable requests for access to facilities and related support services relevant for the separate sale of regulated retail data roaming services. Access to those facilities and support services that are necessary for the separate sale of regulated retail data roaming services, including user authentication services, shall be free of charge and shall not entail any direct charges to roaming customers.';

(c) paragraph 2 is replaced by the following:

'2. In order to ensure consistent and simultaneous implementation across the Union of the separate sale of regulated retail data roaming services, the Commission shall, by means of implementing acts and after having consulted BEREC, adopt detailed rules on a technical solution for the implementation of the separate sale of regulated retail data roaming services. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 6(2).';

(d) in paragraph 3, the introductory words are replaced by the following:

'3. The technical solution to implement the separate sale of regulated retail data roaming services shall meet the following criteria:'.

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- (5) The following Articles are inserted:

*Article 6a***Abolition of retail roaming surcharges**

With effect from 15 June 2017, provided that the legislative act to be adopted following the proposal referred to in Article 19(2) is applicable on that date, roaming providers shall not levy any surcharge in addition to the domestic retail price on roaming customers in any Member State for any regulated roaming calls made or received, for any regulated roaming SMS messages sent and for any regulated data roaming services used, including MMS messages, nor any general charge to enable the terminal equipment or service to be used abroad, subject to Articles 6b and 6c.

*Article 6b***Fair use**

1. Roaming providers may apply in accordance with this Article and the implementing acts referred to in Article 6d a ‘fair use policy’ to the consumption of regulated retail roaming services provided at the applicable domestic retail price level, in order to prevent abusive or anomalous usage of regulated retail roaming services by roaming customers, such as the use of such services by roaming customers in a Member State other than that of their domestic provider for purposes other than periodic travel.

Any fair use policy shall enable the roaming provider’s customers to consume volumes of regulated retail roaming services at the applicable domestic retail price that are consistent with their respective tariff plans.

2. Article 6e shall apply to regulated retail roaming services exceeding any limits under any fair use policy.

*Article 6c***Sustainability of the abolition of retail roaming surcharges**

1. In specific and exceptional circumstances, with a view to ensuring the sustainability of its domestic charging model, where a roaming provider is not able to recover its overall actual and projected costs of providing regulated roaming services in accordance with Articles 6a and 6b, from its overall actual and projected revenues from the provision of such services, that roaming provider may apply for authorisation to apply a surcharge. That surcharge shall be applied only to the extent necessary to recover the costs of providing regulated retail roaming services having regard to the applicable maximum wholesale charges.

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2. Where a roaming provider decides to avail itself of paragraph 1 of this Article, it shall without delay submit an application to the national regulatory authority and provide it with all necessary information in accordance with the implementing acts referred to in Article 6d. Every 12 months thereafter, the roaming provider shall update that information and submit it to the national regulatory authority.

3. Upon receipt of an application pursuant to paragraph 2, the national regulatory authority shall assess whether the roaming provider has established that it is unable to recover its costs in accordance with paragraph 1, with the effect that the sustainability of its domestic charging model would be undermined. The assessment of the sustainability of the domestic charging model shall be based on relevant objective factors specific to the roaming provider, including objective variations between roaming providers in the Member State concerned and the level of domestic prices and revenues. The national regulatory authority shall authorise the surcharge where the conditions laid down in paragraph 1 and this paragraph are met.

4. Within one month of receipt of an application pursuant to paragraph 2, the national regulatory authority shall authorise the surcharge unless the application is manifestly unfounded or provides insufficient information. Where the national regulatory authority considers that the application is manifestly unfounded, or considers that insufficient information has been provided, it shall take a final decision within a further period of two months, after having given the roaming provider the opportunity to be heard, authorising, amending or refusing the surcharge.

*Article 6d***Implementation of fair use policy and of sustainability of the abolition of retail roaming surcharges**

1. By 15 December 2016, in order to ensure consistent application of Articles 6b and 6c, the Commission shall, after having consulted BEREC, adopt implementing acts laying down detailed rules on the application of fair use policy and on the methodology for assessing the sustainability of the abolition of retail roaming surcharges and on the application to be submitted by a roaming provider for the purposes of that assessment. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 6(2).

2. As regards Article 6b, when adopting implementing acts laying down detailed rules on the application of fair use policy, the Commission shall take into account the following:

- (a) the evolution of pricing and consumption patterns in the Member States;
- (b) the degree of convergence of domestic price levels across the Union;
- (c) the travelling patterns in the Union;

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(d) any observable risks of distortion of competition and investment incentives in domestic and visited markets.

3. As regards Article 6c, when adopting implementing acts laying down detailed rules on the methodology for assessing the sustainability of the abolition of retail roaming surcharges for a roaming provider, the Commission shall base them on the following:

- (a) the determination of the overall actual and projected costs of providing regulated retail roaming services by reference to the effective wholesale roaming charges for unbalanced traffic and a reasonable share of the joint and common costs necessary to provide regulated retail roaming services;
- (b) the determination of overall actual and projected revenues from the provision of regulated retail roaming services;
- (c) the consumption of regulated retail roaming services and the domestic consumption by the roaming provider's customers;
- (d) the level of competition, prices and revenues in the domestic market, and any observable risk that roaming at domestic retail prices would appreciably affect the evolution of such prices.

4. The Commission shall periodically review the implementing acts adopted pursuant to paragraph 1 in the light of market developments.

5. The national regulatory authority shall strictly monitor and supervise the application of the fair use policy and the measures on the sustainability of the abolition of retail roaming surcharges, taking utmost account of relevant objective factors specific to the Member State concerned and of relevant objective variations between roaming providers. Without prejudice to the procedure set out in Article 6c(3), the national regulatory authority shall in a timely manner enforce the requirements of Articles 6b and 6c and the implementing acts adopted pursuant to paragraph 1 of this Article. The national regulatory authority may at any time require the roaming provider to amend or discontinue the surcharge if it does not comply with Article 6b or 6c. The national regulatory authority shall inform the Commission annually concerning the application of Articles 6b and 6c, and of this Article.

*Article 6e***Provision of regulated retail roaming services**

1. Without prejudice to the second subparagraph, where a roaming provider applies a surcharge for the consumption of regulated retail roaming services in excess of any limits under any fair use policy, it shall meet the following requirements (excluding VAT):

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- (a) any surcharge applied for regulated roaming calls made, regulated roaming SMS messages sent and regulated data roaming services shall not exceed the maximum wholesale charges provided for in Articles 7(2), 9(1) and 12(1), respectively;
- (b) the sum of the domestic retail price and any surcharge applied for regulated roaming calls made, regulated roaming SMS messages sent or regulated data roaming services shall not exceed EUR 0,19 per minute, EUR 0,06 per SMS message and EUR 0,20 per megabyte used, respectively;
- (c) any surcharge applied for regulated roaming calls received shall not exceed the weighted average of maximum mobile termination rates across the Union set out in accordance with paragraph 2.

Roaming providers shall not apply any surcharge to a regulated roaming SMS message received or to a roaming voicemail message received. This shall be without prejudice to other applicable charges such as those for listening to such messages.

Roaming providers shall charge roaming calls made and received on a per second basis. Roaming providers may apply an initial minimum charging period not exceeding 30 seconds to calls made. Roaming providers shall charge their customers for the provision of regulated data roaming services on a per-kilobyte basis, except for MMS messages, which may be charged on a per-unit basis. In such a case, the retail charge which a roaming provider may levy on its roaming customer for the transmission or receipt of a roaming MMS message shall not exceed the maximum retail charge for regulated data roaming services set out in the first subparagraph.

During the period referred to in Article 6f(1), this paragraph shall not preclude offers which provide roaming customers, for a per diem or any other fixed periodic charge, with a certain volume of regulated roaming services consumption on condition that the consumption of the full amount of that volume leads to a unit price for regulated roaming calls made, calls received, SMS messages sent and data roaming services which does not exceed the respective domestic retail price and the maximum surcharge as set out in the first subparagraph of this paragraph.

2. By 31 December 2015, the Commission shall, after consulting BEREC and subject to the second subparagraph of this paragraph, adopt implementing acts setting out the weighted average of maximum mobile termination rates referred to in point (c) of the first subparagraph of paragraph 1. The Commission shall review those implementing acts annually. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 6(2).

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The weighted average of maximum mobile termination rates shall be based on the following criteria:

- (a) the maximum level of mobile termination rates imposed in the market for wholesale voice call termination on individual mobile networks by the national regulatory authorities in accordance with Articles 7 and 16 of the Framework Directive and Article 13 of the Access Directive, and
- (b) the total number of subscribers in Member States.

3. Roaming providers may offer, and roaming customers may deliberately choose, a roaming tariff other than one set in accordance with Articles 6a, 6b, 6c and paragraph 1 of this Article, by virtue of which roaming customers benefit from a different tariff for regulated roaming services than they would have been accorded in the absence of such a choice. The roaming provider shall remind those roaming customers of the nature of the roaming advantages which would thereby be lost.

Without prejudice to the first subparagraph, roaming providers shall apply a tariff set in accordance with Articles 6a and 6b, and paragraph 1 of this Article to all existing and new roaming customers automatically.

Any roaming customer may, at any time, request to switch to or from a tariff set in accordance with Articles 6a, 6b, 6c and paragraph 1 of this Article. When roaming customers deliberately choose to switch from or back to a tariff set in accordance with Articles 6a, 6b, 6c and paragraph 1 of this Article, any switch shall be made within one working day of receipt of the request, shall be free of charge and shall not entail conditions or restrictions pertaining to elements of the subscriptions other than roaming. Roaming providers may delay a switch until the previous roaming tariff has been effective for a minimum specified period not exceeding two months.

4. Roaming providers shall ensure that a contract which includes any type of regulated retail roaming service specifies the main characteristics of that regulated retail roaming service provided, including in particular:

- (a) the specific tariff plan or tariff plans and, for each tariff plan, the types of services offered, including the volumes of communications;
- (b) any restrictions imposed on the consumption of regulated retail roaming services provided at the applicable domestic retail price level, in particular quantified information on how any fair use policy is applied by reference to the main pricing, volume or other parameters of the provided regulated retail roaming service concerned.

Roaming providers shall publish the information referred to in the first subparagraph.

▼B*Article 6f***Transitional retail roaming surcharges**

1. From 30 April 2016 until 14 June 2017, roaming providers may apply a surcharge in addition to the domestic retail price for the provision of regulated retail roaming services.

2. During the period referred to in paragraph 1 of this Article, Article 6e shall apply *mutatis mutandis*.

(6) Articles 8, 10 and 13 are deleted.

(7) Article 14 is amended as follows:

(a) in paragraph 1, the second subparagraph is replaced by the following:

‘That basic personalised pricing information shall be expressed in the currency of the home bill provided by the customer’s domestic provider and shall include information on:

(a) any fair use policy that the roaming customer is subject to within the Union and the surcharges which apply in excess of any limits under that fair use policy; and

(b) any surcharge applied in accordance with Article 6c.’;

(b) in paragraph 1, the sixth subparagraph is replaced by the following:

‘The first, second, fourth and fifth subparagraphs, with the exception of the reference to the fair use policy and the surcharge applied in accordance with Article 6c, shall also apply to voice and SMS roaming services used by roaming customers travelling outside the Union and provided by a roaming provider.’;

(c) the following paragraph is inserted:

‘2a. The roaming provider shall send a notification to the roaming customer when the applicable fair use volume of regulated voice, or SMS, roaming services is fully consumed or any usage threshold applied in accordance with Article 6c is reached. That notification shall indicate the surcharge that will be applied to any additional consumption of regulated voice, or SMS, roaming services by the roaming customer. Each customer shall have the right to require the roaming provider to stop sending such notifications and shall have the right, at any time and free of charge, to require the roaming provider to provide the service again.’;

(d) paragraph 3 is replaced by the following:

‘3. Roaming providers shall provide all customers with full information on applicable roaming charges, when subscriptions are taken out. They shall also provide their roaming customers with updates on applicable roaming charges without undue delay each time there is a change in these charges.

Roaming providers shall send a reminder at reasonable intervals thereafter to all customers who have opted for another tariff.’.

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(8) Article 15 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. An automatic message from the roaming provider shall inform the roaming customer that the latter is using regulated data roaming services, and provide basic personalised tariff information on the charges (in the currency of the home bill provided by the customer’s domestic provider) applicable to the provision of regulated data roaming services to that roaming customer in the Member State concerned, except where the customer has notified the roaming provider that he does not require that information.

That basic personalised tariff information shall include information on:

- (a) any fair use policy that the roaming customer is subject to within the Union and the surcharges which apply in excess of any limits under that fair use policy; and
- (b) any surcharge applied in accordance with Article 6c.

The information shall be delivered to the roaming customer’s mobile device, for example by an SMS message, an e-mail or a pop-up window on the mobile device, every time the roaming customer enters a Member State other than that of his domestic provider and initiates for the first time a data roaming service in that particular Member State. It shall be provided free of charge at the moment the roaming customer initiates a regulated data roaming service, by an appropriate means adapted to facilitate its receipt and easy comprehension.

A customer who has notified his roaming provider that he does not require the automatic tariff information shall have the right at any time and free of charge to require the roaming provider to provide this service again.’;

(b) the following paragraph is inserted:

‘2a. The roaming provider shall send a notification when the applicable fair use volume of regulated data roaming service is fully consumed or any usage threshold applied in accordance with Article 6c is reached. That notification shall indicate the surcharge that will be applied to any additional consumption of regulated data roaming services by the roaming customer. Each customer shall have the right to require the roaming provider to stop sending such notifications and shall have the right, at any time and free of charge, to require the roaming provider to provide the service again.’;

(c) in paragraph 3, the first subparagraph is replaced by the following:

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‘3. Each roaming provider shall grant to all their roaming customers the opportunity to opt deliberately and free of charge for a facility which provides in a timely manner information on the accumulated consumption expressed in volume or in the currency in which the roaming customer is billed for regulated data roaming services and which guarantees that, without the customer’s explicit consent, the accumulated expenditure for regulated data roaming services over a specified period of use, excluding MMS billed on a per-unit basis, does not exceed a specified financial limit.’;

- (d) in paragraph 6, the first subparagraph is replaced by the following:

‘6. This Article, with the exception of paragraph 5, of the second subparagraph of paragraph 2 and of paragraph 2a, and subject to the second and third subparagraph of this paragraph, shall also apply to data roaming services used by roaming customers travelling outside the Union and provided by a roaming provider.’.

- (9) Article 16 is amended as follows:

- (a) in paragraph 1, the following subparagraph is added:

‘National regulatory authorities shall strictly monitor and supervise roaming providers availing themselves of Article 6b, 6c and 6e(3).’;

- (b) paragraph 2 is replaced by the following:

‘2. National regulatory authorities shall make up-to-date information on the application of this Regulation, in particular Articles 6a, 6b, 6c, 6e, 7, 9, and 12, publicly available in a manner that enables interested parties to have easy access to it.’.

- (10) Article 19 is replaced by the following:

‘Article 19

Review

1. By 29 November 2015, the Commission shall initiate a review of the wholesale roaming market with a view to assessing measures necessary to enable abolition of retail roaming surcharges by 15 June 2017. The Commission shall review, inter alia, the degree of competition in national wholesale markets, and in particular shall assess the level of wholesale costs incurred and wholesale charges applied, and the competitive situation of operators with limited geographic scope, including the effects of commercial agreements on competition as well as the ability of operators to take advantage of economies of scale. The Commission shall also assess the developments in competition in the retail roaming markets and any observable risks of distortion of competition and investment incentives in domestic and visited markets. In assessing measures necessary to enable the abolition of retail roaming surcharges, the Commission shall take into account the need to ensure that the visited network

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operators are able to recover all costs of providing regulated wholesale roaming services, including joint and common costs. The Commission shall also take into account the need to prevent permanent roaming or anomalous or abusive use of wholesale roaming access for purposes other than the provision of regulated roaming services to roaming providers' customers while the latter are periodically travelling within the Union.

2. By 15 June 2016, the Commission shall submit a report to the European Parliament and to the Council on the findings of the review referred to in paragraph 1.

That report shall be accompanied by an appropriate legislative proposal preceded by a public consultation, to amend the wholesale charges for regulated roaming services set out in this Regulation or to provide for another solution to address the issues identified at wholesale level with a view to abolishing retail roaming surcharges by 15 June 2017.

3. In addition, the Commission shall submit a report to the European Parliament and to the Council every two years after the submission of the report referred to in paragraph 2. Each report shall include, inter alia, an assessment of:

- (a) the availability and quality of services, including those which are an alternative to regulated retail voice, SMS and data roaming services, in particular in the light of technological developments;
- (b) the degree of competition in both the retail and wholesale roaming markets, in particular the competitive situation of small, independent or newly started operators, including the competition effects of commercial agreements and the degree of interconnection between operators;
- (c) the extent to which the implementation of the structural measures provided for in Articles 3 and 4 has produced results in the development of competition in the internal market for regulated roaming services.

4. In order to assess the competitive developments in the Union-wide roaming markets, BEREC shall regularly collect data from national regulatory authorities on the development of retail and wholesale charges for regulated voice, SMS and data roaming services. Those data shall be notified to the Commission at least twice a year. The Commission shall make them public.

On the basis of collected data, BEREC shall also report regularly on the evolution of pricing and consumption patterns in the Member States both for domestic and roaming services and the evolution of actual wholesale roaming rates for unbalanced traffic between roaming providers.

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BEREC shall also annually collect information from national regulatory authorities on transparency and comparability of different tariffs offered by operators to their customers. The Commission shall make those data and findings public.’.

*Article 8***Amendment to Directive 2002/22/EC**

In Article 1 of Directive 2002/22/EC, paragraph 3 is replaced by the following:

‘3. National measures regarding end-users’ access to, or use of, services and applications through electronic communications networks shall respect the fundamental rights and freedoms of natural persons, including in relation to privacy and due process, as defined in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.’.

*Article 9***Review clause**

By 30 April 2019, and every four years thereafter, the Commission shall review Articles 3, 4, 5 and 6 and shall submit a report to the European Parliament and to the Council thereon, accompanied, if necessary, by appropriate proposals with a view to amending this Regulation.

*Article 10***Entry into force and transitional provisions**

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

2. It shall apply from 30 April 2016, except for the following:

- (a) In the event that the legislative act to be adopted following the proposal referred to in Article 19(2) of Regulation (EU) No 531/2012 is applicable on 15 June 2017, point 5 of Article 7 of this Regulation, as regards Articles 6a to 6d of Regulation (EU) No 531/2012, point 7(a) to (c) of Article 7 of this Regulation and point 8(a), (b) and (d) of Article 7 of this Regulation shall apply from that date.

In the event that that legislative act is not applicable on 15 June 2017, point 5 of Article 7 of this Regulation, as regards Article 6f of Regulation (EU) No 531/2012, shall continue to apply until that legislative act becomes applicable.

In the event that that legislative act becomes applicable after 15 June 2017, point 5 of Article 7 of this Regulation, as regards Articles 6a to 6d of Regulation (EU) No 531/2012, point 7(a) to (c) of Article 7 of this Regulation and point 8(a), (b) and (d) of Article 7 shall apply from the date of application of that legislative act;

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- (b) the conferral of implementing powers on the Commission in point 4(c) of Article 7 of this Regulation and in point 5 of Article 7 of this Regulation, as regards Articles 6d and 6e(2) of Regulation (EU) No 531/2012, shall apply from 29 November 2015;
 - (c) Article 5(3) shall apply from 29 November 2015;
 - (d) point 10 of Article 7 of this Regulation shall apply from 29 November 2015.
3. Member States may maintain until 31 December 2016 national measures, including self-regulatory schemes, in place before 29 November 2015 that do not comply with Article 3(2) or (3). Member States concerned shall notify those measures to the Commission by 30 April 2016.
4. The provisions of Commission Implementing Regulation (EU) No 1203/2012 ⁽¹⁾ relating to the technical modality for the implementation of accessing local data roaming services on a visited network shall continue to apply for the purposes of separate sale of regulated retail data roaming services until the adoption of the implementing act referred to in point 4(c) of Article 7 of this Regulation.

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5. Article 5a shall expire on 14 May 2024.

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

⁽¹⁾ Commission Implementing Regulation (EU) No 1203/2012 of 14 December 2012 on the separate sale of regulated retail roaming services within the Union (OJ L 347, 15.12.2012, p. 1).