

3.3 The transfer of activity and of know-how can only be successful if the legal framework is clearly defined and legal certainty is ensured.

3.4 The aim of the proposal is precisely to establish this legal framework and to ensure this legal security on the essential issues, which are:

- the taking-over of the Joint Undertaking's activities for the development phase, which does not currently fall within the European Supervisory Authority's remit;
- the possibility that the European Supervisory Authority might be able to carry out research activities;

— to find a legal solution to the issue of the ownership of the system and of the intangible and tangible assets, which must be transferred to the European Supervisory Authority.

3.5 The proposed Regulation meets these requirements and the Council's clear willingness to avoid any organisational overlap, which would be both pointless and costly, must be welcomed.

3.6 With regard to another legal aspect, which is not directly related to the Regulation in question, the Council should consider the issue of the launching States' international liability for the satellites in the GALILEO constellation.

Brussels, 26 October 2006.

The President of the  
European Economic and Social Committee  
Dimitris DIMITRIADIS

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**Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council on roaming on public mobile networks within the Community and amending Directive 220/21/EC on a common regulatory framework for electronic communications networks and services**

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(2006/C 324/19)

On 4 September 2006 the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the abovementioned proposal.

On 12 September 2006 the Committee Bureau instructed the Section for Transport, Energy, Infrastructure and the Information Society to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr Hernández Bataller as rapporteur-general at its 430th plenary session, held on 25 and 26 October 2006 (meeting of 26 October), and adopted the following opinion by 131 votes to seven with 12 abstentions.

## 1. Conclusion and recommendations

1.1 The Committee shares the views of the Commission which, in the light of the high prices that mobile users pay for the 'international roaming' service on their mobile handsets, has presented a proposal for a regulation to provide a harmonised legal basis for action to facilitate the completion of the internal market for electronic communications and, at the same time, put citizens at the centre of Community policy.

1.2 The proposal is necessary and proportionate, and raises the level of consumer protection by effectively extending their

right to access to information through its transparency measures, and defending their economic interests by introducing a mechanism applying maximum price limits for the provision of roaming services for voice calls between Member States at retail and wholesale level.

1.3 The Committee would prefer the Commission, in its review of the functioning of the regulation, to base its ensuing proposals on the 'calling party pays' principle. and the 'home pricing' principle under which the prices paid by roaming customers are similar to those applied by their home network.

## 2. Introduction

2.1 Europeans' increasing mobility outside their own countries and, in particular, within the EU, has generated an increasing need to ensure telephone communication through the ever-growing numbers of mobile handsets. Users' ability to make and receive calls when travelling abroad, thanks to agreements between the operators in different countries, is known as 'roaming'.

2.1.1 This involves services provided by a national mobile network operator (visited network) to a mobile operator in another country (home network). The market usually comprises the following services:

- to mobile operators of another Member State or a third country of access from a mobile location;
- to mobile operators of another Member State or a third country from which calls are made from a mobile location;
- to mobile operators within a Member State or a third country from which data is being transmitted from a mobile location;
- to mobile operators within a Member State or a third country of transit of both voice calls and data transmission to users of mobile or fixed, national or international networks.

2.1.2 It is estimated that almost 150 million Europeans are already using this service, either when on holiday or, to a much greater extent (accounting for some three-quarters of the total), for work purposes.

2.2 Roaming unarguably offers economic and social benefits to users, but has also been repeatedly criticised by users, consumer organisations, regulatory authorities and politicians on account of its prices, which are much higher than those paid for national calls. Critics also point out that roaming prices are far from transparent for end users; they are unjustified in view of the costs involved in providing the service, and vary widely between countries and operators: broadly speaking, prices range from EUR 0.20 paid by a Finnish user calling home from Sweden, and EUR 13.05 paid by a Maltese user in Latvia. According to several studies of the sector, operating companies are earning some EUR 8.5 billion a year across the EU for this service, representing between 3 % and 7 % of their turnover — and which is still rising.

2.3 The Commission has been expressing its concern at the high prices of roaming for mobile users travelling in Europe since the end of the last decade, through a number of initiatives:

- In mid-1999, the Commission decided to carry out a sector enquiry covering national and international roaming services, and opened proceedings against certain mobile operators in the United Kingdom and Germany.
- After establishing, in 2002, the regulatory framework for electronic communications <sup>(1)</sup>, the Commission Recommendation of 11 February 2003 <sup>(2)</sup> on relevant product and service markets within the electronic communications sector included the national wholesale market for international roaming on public mobile networks among the relevant services for the purposes of *ex ante* regulation.
- In May 2005, the European Regulators Group <sup>(3)</sup> noted 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.

<sup>(1)</sup> Directive 2002/21/EC of 7 March 2002 on a common regulatory framework for electronic communications networks and services, the 'Framework Directive' (OJ L 108 of 24.4.2002, p. 33). The following were also adopted on the same day: Directive 2002/19/EC on access to, and interconnection with, electronic communications networks and associated facilities, the 'Access Directive' (OJ L 108 of 24.4.2002, p. 7); Directive 2002/20/EC on the authorisation of electronic communications networks and services, the 'Authorisation Directive' (OJ L 108 of 24.4.2002, p. 21); and Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, the 'Universal Service Directive' (OJ L 108 of 24.4.2002, p. 51). Directive 2002/58/EC of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (OJ L 201 of 31.7.2002, p. 27) should also be added to this list.

<sup>(2)</sup> 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 the Council on a common regulatory framework for electronic communication networks and services — C(2003) 497, OJ L 114 of 8.5.2003, p. 45. It identifies 18 markets which are presumed to have been defined in accordance with the provisions of Community law.

<sup>(3)</sup> See Commission Decision 2002/627/EC of 29 July 2002 establishing the European Regulators Group for Electronic Communications Networks and Services (OJ L 200 of 30.7.2002, p. 38), as amended by Commission Decision 2004/641/EC of 14 September 2004 (OJ L 293 of 16.9.2004, p. 30).

- 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 its resolution of 1 December 2005 <sup>(4)</sup> 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 national authorities would not resolve the problem of high prices, noting that roaming creates a clearly exceptional instance where an apparent case of consumer detriment is not prospectively solved simply by applying the above-mentioned framework.
- In March 2006 the European Council noted the importance for competitiveness of reducing roaming charges, in the context of the need for focused, effective and integrated information and communication technology (ITC) policies both at European and national level, in order to achieve the renewed Lisbon Strategy goals of economic growth and productivity <sup>(5)</sup>.

2.4 In spite of the clear diagnosis provided by the criticisms, the initiatives of the European institutions, the measures adopted by some Member States and even the reductions in charges made by certain operators, it has not yet been possible to adopt effective and speedy measures to achieve a substantial and harmonised reduction of roaming prices in the EU.

2.5 After examining various regulatory options and their consequences, on 12 July 2006 the Commission eventually presented a proposal for a regulation on roaming on public mobile networks in the EU, which seeks to limit the prices that operators can charge each other for handling mobile calls, and the price charged to the user for making and receiving such calls outside their home country but within the European Union. The regulation would amend the present framework regulation for electronic communications, laid down by Directive 2002/21/EC.

<sup>(4)</sup> EP Resolution 2005/2052 (INI).

<sup>(5)</sup> 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 the Presidency Conclusions of the Brussels European Council, 22-23 March 2005.

### 3. The Commission's proposal

3.1 The Commission's purpose with the proposed regulation is to establish a harmonised, objective, coherent and proportionate legal basis which facilitates the completion of the internal market in electronic communications, is in keeping with the renewed Lisbon Strategy for promoting growth and employment through greater competitiveness, and responds to the Commission's associated i-2010 initiative.

3.2 Such a basis would enable maximum limits to be set for the charges applied by terrestrial mobile operators within the European Community for the provision of roaming services for voice calls between Member States regarding both wholesale charges between network operators, and the retail charges of the original provider. The maximum price limits would have to take account of the different elements involved in making an international roaming call (including overheads, signalling, call origination, transit and termination) and the differences in the underlying costs of providing the service.

3.3 Under the 'European Home Market Approach', the aim is to ensure a high level of protection for users of public mobile telephone networks travelling within the Community, while safeguarding competition between mobile operators, allowing them to differentiate the products they offer and to adapt their pricing structures to market conditions and consumer preferences.

3.4 Price limits are to be set as follows:

- Wholesale prices for calls made to a destination within a visited country cannot be more than twice the Community average mobile termination rate for mobile network operators designated as having significant market power. The average mobile termination rate is considered to be a reliable benchmark, as these termination rates are already subject to regulatory supervision in accordance with the 2002 regulatory framework for electronic communications, and should be determined by reference to the principle of cost-orientation.
- For calls made from the visited country back to the home country or a third Community country, the price may not be more than three times the above-mentioned average rate.
- At retail level, for the same categories of roaming call, a limit of 130 % of the applicable wholesale limit is set, excluding VAT but including any fixed elements associated with the provision of regulated roaming calls, such as call set up charges or opt-in fees. The price limits laid down for retail charges for making regulated roaming calls will take legal effect six months after the entry into force of the proposed measure, so that service providers can make the necessary adaptations.

— The proposal also sets a limit of 130 % of the average mobile termination rate for the charges paid by roaming customers for receiving calls when in a Community country other than their home country, excluding VAT but including any fixed elements associated with the provision of regulated roaming calls, such as call set up charges or opt-in fees.

3.5 The draft regulation also addresses the need for price transparency, by introducing an obligation upon mobile providers to give personalised information on retail roaming charges to their roaming customers on request. This information is to be free of charge, and customers may choose whether to receive the information by Short Message Service (SMS) or orally over their mobile telephone. Mobile providers will also be obliged to provide information on roaming charges when subscriptions are taken out, on a periodic basis and when there are substantial changes to roaming charges.

3.6 The pricing requirements of the proposed 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.

3.7 The draft regulation gives the national regulatory authorities the power to enforce compliance, in line with their existing roles under the Community regulatory framework for electronic communications. As well as being responsible for communicating the average mobile termination rate, to be published on a regular basis by the Commission, they are also given the task of monitoring developments in retail and wholesale prices for the provision of voice and data communications services, including SMS and Multimedia Message Service (MMS), to mobile customers when roaming in the Community. This applies in particular to the outermost regions, in order to assess viability and recovery of costs by operators and, where appropriate, to determine the penalties for infringement.

3.8 The measures necessary for the implementation of the 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<sup>(6)</sup>. The period laid down in Article 5(6) of Decision 1999/468/EC is three months. The Commission is to be assisted by the Communications Committee set up Article 22 of Directive 2002/21/EC.

3.9 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.

#### 4. General comments

4.1 The Committee appreciates the effort made by the Commission to lay down a legal basis enabling the adoption of effective measures to reduce charges for roaming on mobile voice telephony services in Europe. It is worth noting that the Commission calculates that a reduction of up to 70 % in roaming prices would be possible, representing a saving for consumers of some EUR 5 billion.

4.1.1 The Committee considers that the proposed measure brings a high level of consumer protection in two ways: firstly in terms of their economic interests, by reducing roaming costs; and secondly, by increasing price transparency by means of promoting users' right to access to information. It agrees with the criteria which have prompted the Commission to present this proposal, which it supports.

4.2 The Committee is also aware of the difficulty in reaching agreement on these measures to reduce roaming prices, given the reluctance of certain regulatory authorities and operators. The main criticisms have been that the Commission's proposal goes too far along the regulatory path; there has not been enough consultation with the relevant actors; the deadlines for application are too short, not allowing operators to adjust; the companies involved should be given an opportunity to practice self-regulation; action could have been taken on retail prices but not wholesale charges; the initiative could be particularly prejudicial to operators in countries with large numbers of visitors, or could have the unwanted effect of generating higher prices for other telecom services and jeopardising future investment needs for the development of electronic communications (3G, broadband, etc.).

4.3 On the other hand, it should be pointed out that telephone operators' earnings are so high that their economic viability is guaranteed even with a reduction in roaming rates, as recognised in operators' own sectoral studies.

4.3.1 The choice of a regulation is justified since, while the efforts to reduce roaming prices on the part of some operators are recognised, experience shows that such initiatives fail to guarantee either the rapidity or the degree of harmonisation required for a solution to the problem.

4.3.2 The Committee considers that a regulation is needed, as it can then be applied directly by the Member States. This makes it preferable to simple market self-regulation or measures that Member States might themselves adapt, given the transnational character of roaming. This is a cross-border issue which national regulatory authorities are unable to tackle.

<sup>(6)</sup> OJL 184 of 17.7.1999, p. 23.

4.4 Moreover, the possibility in the future of creating virtual operators points to the dangers of adopting different decisions for different parts of the EU, which could compromise the overall development of electronic telecommunications throughout Europe.

4.5 Together with all the above points, the EESC regrets that the Commission's measures to bring an end to the excessive charging for this service by operators fall far short of users' expectations, and indeed short of the measures that the Commission itself had originally envisaged.

4.6 The Committee believes that the aim should be to remove all differences in roaming-related charges between Member States, without undermining whatever competition may develop between the products offered by the different operators. In practice, this means customers pay the same price as in their home country, regardless of where they are (the 'home pricing' principle). The goal of domestic and roaming price parity is not achieved with the draft regulation, in spite of the reduction in charges.

4.7 The proposed regulation sets limits on the prices to be paid by roaming customers for calls received, but does not abolish such payments, as long demanded by user companies and consumers, and as the Commission had originally envisaged. The Committee believes that future efforts should be directed to introducing the 'caller pays' principle, which is fairer.

4.8 The Committee regrets that the Commission has not assessed the possible social impact on employment of adopting this measure, and hopes that its implementation will not undermine either employment or working conditions in the sector: on the contrary, it hopes that the expectations raised by the European Social Agenda <sup>(7)</sup> can be upheld.

4.8.1 The Committee views the six month delay before the entry into force of the retail charge limits — the price paid by final users — to be excessive, given that operators can easily

adapt to the new situation, and calls for this delay to be removed.

4.8.2 It is however considered more reasonable for the proposed regulation to include a number of transitional measures for a period of six months, introducing measures to offset the imbalances which might result for some operators from the implementation of the regulation, especially in the new Member States — provided that such transitional arrangements are not discriminatory towards consumers in these countries.

4.9 The Committee hopes that the implementation of the regulation will not lead to an adjustment in mobile charges, whereby certain operators, under specific circumstances, attempt to recover costs by increasing their gains from other services. For this reason, it must be ensured that the mechanisms for setting wholesale and retail charges cover all service costs.

4.9.1 However, given the highly dynamic nature of the electronic communications market, the Committee agrees with the Commission's intention to review the functioning of the regulation no later than two years after its entry into force. In the planned report, the Commission must include its reasoning regarding the continued need for regulation or the possibility of its repeal, in the light of developments in the market and with regard to competition.

4.9.2 When the functioning of the regulation is reviewed, its impact on employment and working conditions, and on operators' investment, must be assessed in order to identify the consequences.

4.10 The Committee believes that the opportunity provided by the adoption of the regulation should be used to resolve other roaming-related problems, apart from unfair pricing of services, such as the equally unfair activation of roaming services in border areas between EU countries.

Brussels, 26 October 2006.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

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<sup>(7)</sup> COM(2005) 33 final. Communication from the Commission on the Social Agenda.