

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 717/2007 on roaming on public mobile telephone networks within the Community and Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services'

COM(2008) 580 final — 2008/0187(COD)

(2009/C 182/12)

Rapporteur-general: **Mr HENCKS**

On 6 November 2008, the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 717/2007 on roaming on public mobile telephone networks within the Community and Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services

COM(2008) 580 final — 2008/0187 (COD).

On 21 October 2008, 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 HENCKS as a rapporteur-general at its 450th plenary session, held on 14 and 15 January 2009 (meeting of 15 January 2009), and adopted the following opinion by 132 votes to 1.

1. Conclusions

1.1 The stated aim of Regulation (EC) 717/2007, which was to ensure that roaming users of mobile services should not pay an excessive price when making or receiving calls has, broadly speaking, been achieved: 400 million consumers now benefit from a Eurotariff.

1.2 However, according to the Commission, the development of prices for Community-wide voice roaming services since the entry into force of the above-mentioned Regulation does not provide sufficient evidence to suggest that competition at the retail or wholesale levels is likely to be sustainable from 2010 onwards in the absence of regulatory measures; prices at wholesale and retail level do not vary sufficiently below the maximum levels set by the Regulation to provide evidence of healthy competition.

1.3 Therefore, so that consumers continue to benefit from the assurance that they will not be charged an excessive price when making or receiving a regulated roaming call, the Commission's main proposals are:

- to extend Regulation 717/2007 until 30 June 2013;
- to continue to lower, during the extended period, the maximum call price per minute by EUR 0.03 per year;
- to set maximum roaming prices for SMS (wholesale and retail) and for data transmission (wholesale).

1.4 The EESC welcomes the new reductions in maximum prices for roaming voice calls which it considers proportionate and appropriate.

1.5 It also approves the introduction of a maximum Eurotariff for retail SMS messages and the introduction of a cap on wholesale prices.

1.6 With respect to roaming data transmission services, the EESC regrets that the proposal to reduce prices only applies to wholesale data services, although retail prices are also excessive due to the lack of sufficient competitive pressure.

1.7 Lastly, the EESC believes that it is absolutely vital to strengthen consumers' right to information so as to offer them better protection and more transparency with regard to prices.

2. Background

2.1 The European Council of 23 and 24 March 2006 concluded that focused, effective and integrated information and communication technology policies at both European and national level were essential to achieving the Lisbon Strategy's goals of economic growth and productivity and, in this context, noted the importance for competitiveness of reducing roaming charges.

2.2 The Commission had on many previous occasions expressed concern about the excessive retail prices paid by users of public mobile communication networks when using their mobile telephone in another country within the Community (Community roaming charges), due to a high level of wholesale charges levied by the operator of the foreign host network and, in many cases, high mark-ups on the retail price charged by the subscriber's network operator.

2.3 The 2002 regulatory framework for electronic communications did not provide the national regulatory authorities with adequate means of taking effective measures to tackle excessive Community roaming charges.

2.4 In these circumstances, the European Union, on the basis of Article 95 of the EC Treaty, took action in the market by means of a regulation ⁽¹⁾, setting, for the period from 1.9.2007 to 30.9.2010:

— a ceiling on the wholesale price per minute;

— a maximum 'Eurotariff' for the retail market

that may be levied by mobile operators for the provision of international roaming services for voice calls originating and terminating within the Community.

2.5 In its opinion on the subject ⁽²⁾, the EESC welcomed the measure and considered that the EU's action was necessary and proportionate, and raised 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.

2.6 In its position, the European Parliament agreed that the common approach should be established for a limited time period, but called for it to be able to be extended or amended in the light of a review to be carried out by the Commission by 3 December 2008, which was also to examine the impact of the Regulation on the smaller mobile telephony providers in the Community and their position in the Community-wide roaming market.

⁽¹⁾ Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC.

⁽²⁾ Rapporteur Mr Hernández Bataller, OJ C 324, 30.12.2006, p. 42.

2.7 In view of the fact that, in addition to voice telephony, new mobile data communication services are gaining ever more ground, the European Parliament called on the Commission to monitor market developments in roaming data communication services, including SMS (short message service) and MMS (multi-media messaging service) in the Community.

3. The Commission proposal

3.1 The proposed regulation under consideration is based on a communication ⁽³⁾ on the review of the functioning of Regulation (EC) No 717/2007 and on two Commission working documents ⁽⁴⁾.

3.2 These documents state that prices for voice roaming calls at wholesale and retail level do not vary sufficiently below the maximum levels set by Regulation 717/2007 to provide evidence of healthy competition.

3.3 SMS and data roaming services represent 12,3 % and 8,6 % respectively of roaming revenue. SMS roaming prices have, generally speaking, varied little over the last year, despite the political pressure put on operators to encourage them to lower prices, thus avoiding official regulation.

3.4 Consequently, since Regulation (EC) No 717/2007 has not led to healthy competition and since wavelengths are a limited resource and it is therefore impossible to relaunch competition by increasing the number of alternative operators, the Commission has been obliged to make the following proposals:

— to extend the current regulation beyond 30 June 2010 for a further period of three years;

— to set new maximum limits on the charges mobile operators may levy for roaming voice calls during the extended period of validity;

— to clarify the requirements regarding per second billing;

— to bring forward the date provided for the decrease in the price limits for roaming voice calls from 30 August 2009 to 1 July 2009;

— to extend the scope of Regulation 717/2007 to cover intra-Community roaming SMS services;

— to set a maximum limit on wholesale data roaming charges and to introduce transparency and safeguard mechanisms;

— to promote price transparency.

⁽³⁾ COM(2008) 579 final.

⁽⁴⁾ SEC(2008)2489 and SEC (2008)2490.

4. Specific comments

4.1 In its opinion on Regulation 717/2007, the EESC strongly supported the Commission's aim to achieve a reduction in roaming charges of up to 70 %, which would save the consumer around EUR 5 billion.

4.2 Its proposal for further lowering the maximum prices set out below will lead to this aim being exceeded with regard to incoming calls (down 76 %), whereas the total fall for outgoing calls will be 55,8 %.

EUR/min excluding VAT	Wholesale price	Diff. %	Retail price MOC (*)	Diff. %	Retail price MTC (**)	Diff. %
<i>average price before 1.9.2007</i>			0,7692		0,417	
Regulation No 717/2007						
maximum price 1.9.2007- 31.8.2008	0,30		0,49		0,24	
maximum price 1.9.2008- 30.6.2009 (***)	0,28	6,67	0,46	6,12	0,22	8,33
maximum price 1.7.2009 (***)-30.6.2010	0,26	7,14	0,43	6,52	0,19	13,64
Proposed regulation COM(2008)580						
maximum price 1.7.2010- 30.6.2011	0,23	11,54	0,40	6,98	0,16	15,79
max. price 1.7.2011- 30.6.2012	0,20	13,04	0,37	7,50	0,13	18,75
max. price 1.7.2012- 30.6.2013	0,17	15,00	0,34	8,11	0,10	23,75
total fall			0,4292	55,79	0,317	76,01

(*) MOC = mobile originating call/outgoing call.

(**) MTC = mobile terminal call/incoming call.

(***) The Commission proposes to bring forward by two months the date that was initially fixed at 30 August 2009.

4.3 The EESC supports the new measures and congratulates the Commission on its necessary and proportionate initiative which also strengthens consumers' right to information with a view to offering them better protection and more transparency with regard to prices.

4.4 The EESC observes with satisfaction that according to the information provided by the Commission, the price cuts introduced by Regulation 717/2007 have not led to any reductions in jobs or a worsening of working conditions in the sector.

4.5 In its analysis documents, the Commission distinguishes between pay-as-you-go and pay monthly payment schemes for voice and SMS services. However, this difference is not taken into account in the pricing structure set or proposed by the Commission, whereas the economic added value for operators varies substantially between these two categories.

4.6 Moreover, the EESC considers that the European Parliament's call for the impact on smaller mobile communications providers in the Community and their position in the Community-wide roaming market to be assessed is dealt with only vaguely.

4.7 In its opinion on Regulation 717/2007, the EESC expressed its concern that the implementation of the regulation might lead to an adjustment in domestic mobile charges, whereby certain operators, under specific circumstances, attempt to recover costs by increasing their gains from other services.

4.8 The Commission states that, since the entry into force of the first mandatory maximum prices, it has not noticed any increase in domestic pricing that could specifically be attributed to Regulation 717/2007. However, some operators have introduced considerable increases in roaming charges to or from non-EU countries, which fall outside the remit of the Commission and national regulatory bodies.

4.9 With regard to billing for the length of calls, although the maximum retail charges set by the Regulation are expressed as per-minute prices, the Commission's preferred solution was to allow operators to charge a maximum set-up fee equivalent to the initial 30 seconds of a roaming call made, followed by per second billing.

4.10 However, many operators continued their old practices, or even changed their price structure, billing in units of more than 30 and up to 60 seconds. It was noted that the billed duration of outgoing calls was on average 24 % higher than the actual duration of those calls.

4.11 The Commission's new proposal imposes, from 1 July 2009, per second billing for all regulated roaming calls, whether made or received, but with the possibility of an initial minimum charging period not exceeding 30 seconds. This 30-second charging period is justified by the fact that any call, however short, brings significant technical resources into play.

4.12 However, this derogation from the general rule of per-second billing applies only to outgoing calls, whilst incoming calls also require substantial technical resources.

4.13 The Commission proposal brings forward the date provided for the decrease in the maximum price limits for roaming voice calls at both wholesale and retail levels from 30 August to 1 July 2009 so that users can benefit from the new prices during the period in which demand is highest. This presupposes that the regulation under consideration enters into force quickly.

4.14 The proposal under consideration introduces, with effect from 1 July 2009 until 30 June 2013, a maximum Euro-SMS tariff that must not exceed EUR 0,11, and a maximum wholesale price of EUR 0,04.

4.15 With regard to data roaming services, the Commission proposal does not, at this stage, propose any retail price regulation, but sets a maximum average wholesale price of EUR 1/MB

from 1.7.2009. However, in the recitals to the Regulation under consideration, the Commission notes that the high level of retail prices for data roaming services and the fact that competition in these services is still not sufficient remain a concern, particularly since, in its view, there is still room for improvement as far as price transparency is concerned.

4.16 In these circumstances, the EESC has considerable doubts as to whether the use of alternative means of accessing data services, such as public wireless Internet access, can provide the necessary competitive pressure. The EESC would have preferred the Commission to take immediate action to address prices in this market as well.

4.17 The proposal also provides for the introduction of a mechanism that will allow for connections to be cut if a data bill hits a threshold to be determined freely by the customer, and an automated warning message as this threshold approaches.

4.18 Such a measure, as useful as it may be, raises significant technical problems and risks leaving customers high and dry if they are not able to take a simple step that allows them to exceed the threshold that they themselves have set. Moreover, it is not exactly in line with the desire for transparency and for gearing tariffs to costs. The EESC regrets that these issues were not dealt with in the relevant impact assessment.

4.19 The Commission's proposal also aims to promote price transparency. For this purpose, it extends the obligation on mobile providers to give their roaming customers personalised price information when entering another Member State, to include information on the cost of roaming SMS and data services.

4.20 The EESC supports this measure, on the understanding that it is vital to avoid a situation where multiple information messages are sent each time a border is crossed and that, in addition, care must be taken to ensure that the information on prices is clear and comprehensible and allows comparisons with alternative offers.

Brussels, 15 January 2009.

The President
of the European Economic and Social Committee
Mario SEPI
