



ERG (09) 24 final

INTERNATIONAL ROAMING REGULATION

ERG GUIDELINES

Introduction

1) These ERG Guidelines are designed to complement Regulation (EC) No 544/2009¹ of the European Parliament and of the Council of 18 June 2009 amending Regulation (EC) No 717/2007 on roaming on public mobile telephone networks within the Community (the first Roaming Directive)² and Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (the Framework Directive). For countries where Regulation (EC) No 544/2009 has entered into force, these Guidelines replace the ERG Guidelines published on 15 December 2008 (ERG (07) 86rev2 081215), which discussed the first Roaming Regulation (EC) No 717/2007.

2) As before, these Guidelines are complementary to the provisions set out in the Regulation, and are not presented as a legal interpretation of those provisions.

3) ERG notes that the retail provisions of the Regulation apply to MNOs, MVNOs and other service providers that offer retail roaming services. In contrast, the wholesale provisions of the Regulation apply only to wholesale roaming agreements, which are normally transacted only between MNOs.

Retail issues

Transfers between tariffs

4) Article 4(4) and Article 4b(6) grant the right to all customers to request to switch to or from the Eurotariff or to or from the Euro-SMS tariff, respectively. The switch must be made within 1 working day of the request and free of charge. The service provider is permitted to enforce a minimum specified period for the customer's previous roaming tariff before activating such a request, provided that it does not exceed 3 months.

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:167:0012:0023:EN:PDF>

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:171:0032:0040:EN:PDF>

Bundling of regulated retail roaming tariffs and other retail tariffs

5) Article 4(1) and Article 4b(1) provide that a Eurotariff and a Euro-SMS tariff, respectively, may be 'combined with any retail tariff'. Therefore retail tariffs for services other than regulated voice roaming calls or regulated roaming SMS (e.g. tariffs for domestic and international voice calls, for domestic and international SMS and for mobile data services) must not be offered on the basis that they cannot be combined with the Eurotariff or the Euro-SMS tariff. Article 4b also provides that a 'Euro-SMS tariff may always be combined with a Eurotariff'.

6) However, it is not the intention of the Regulation to prohibit the sale of special roaming tariffs that may be advantageous to certain customers. The continuation of such tariffs is explicitly provided for in Article 4(3) for voice, and Article 4b(4) for SMS. For example, tariffs that provide attractive rates for roaming calls to or from certain third countries and higher rates (than under the Eurotariff) for roaming calls within Europe may be offered, provided at all times that customers can choose the Eurotariff in accordance with Article 4(4).

Basic personalised pricing information: voice, SMS and data

7) Unless they have opted not to receive such information, all customers are entitled to receive at least one automatic message providing basic roaming information for the visited Member State, which is personal to that customer (Articles 6 and 6a(2)).

8) For data roaming, the information must be sent to the customer's mobile phone or other device, for example if they use a PDA or a laptop with a dongle. The means of sending the information are left to the provider's discretion, for example by SMS, e-mail or a pop-up window. ERG considers it important that the 'information should be delivered... in the manner best suited to its easy receipt and comprehension' (Recital (34)), in a way that will adequately attract the consumer's attention, and in sufficient detail to enable the customer to make a basic, informed purchasing decision (subject to the ability to obtain more detailed information by free phone service). Where SMS are used, providers may send more than 160 characters if needed, although ERG considers that customers are likely to appreciate concise messages.

9) The following information must be provided to roaming customers:

a) the maximum charges while in the visited country for roaming voice calls made back to the subscriber's home country and within the visited country, for sending regulated roaming SMS, and for using regulated data roaming services, which includes charges for sending a roaming MMS. Providers must also send information on maximum charges for calls received and for MMS received that the customer will pay under his or her tariff scheme;

b) the possibility of accessing the emergency services by dialling 112 free of charge; and

c) a free phone number from which the customer can obtain more detailed personalised information on voice, SMS, MMS or data services and information on the transparency measures in the Regulation, by means of a voice call or an SMS.

10) Customers have the possibility to opt-out of receiving information on the maximum charges for regulated voice and SMS roaming services, access to 112, the

free phone number for more detailed information, and the maximum charges for regulated data roaming services, including MMS.

11) In addition, ERG considers that it would be good practice to:

d) where necessary, distinguish between charges that differ according to the host network used in the visited country; and

e) specify the maximum rates that a consumer will pay for roaming voice calls made and received where these are higher than the rates specified under (a) above, for example for making a roaming voice call to a Member State other than the subscriber's home country or within the visited country.

When should the basic information be provided?

12) Providers are required to send information on voice, SMS, 112 and the free phone number for detailed information to the customer 'without undue delay and free of charge, when he enters a Member State other than that of his home network', i.e. when the customer's handset connects for the first time to a foreign network (Article 6). This maximises the chance that the customer has received the message by the time he or she uses voice or SMS roaming, and so can make an informed purchasing decision.

13) In contrast, information on data roaming, which includes MMS, should be 'delivered... every time the roaming customer enters a Member State other than that of his home network **and** initiates for the first time a regulated data roaming service in that particular Member State' (Article 6a(2), emphasis added). ERG understands that the bold "and" in this provision requires only one message to be sent when both conditions are met (entry into another Member State plus initiation of a data roaming service).

14) For users of laptops with dongles or for PDAs, connection to the visited network and initiation of the data roaming session are simultaneous. Indeed, the home network is only able to tell that the user has entered a new Member State when the data session is started. Therefore the provider may send one message to provide all of the required information. For example, this could be provided free of charge on a landing page that opens when a data session is first initiated, before any data transfer takes place.

15) However, for traditional mobile handsets, connection to the visited network and initiation of a data roaming session are not necessarily simultaneous - the user may use voice and SMS services but choose to connect to data roaming later, if at all. Where the provider chooses to send only one message to the customer covering all information required under Articles 6 and 6a(2), there is a tension between compliance with the letter of the Regulation (sending information on data roaming prices when the user initiates a data session) and compliance with the spirit of the Regulation (providing users with timely information so that they can make informed decisions and avoid bill shock, which suggests sending all information when the customer first enters the visited country).

16) ERG considers that the customer's interests in transparency and bill control will best be met if all required information in Article 6 and Article 6a(2) is sent when the customer's traditional mobile handset first connects to a network in another Member State. In order to comply with the letter of the Regulation, providers may consider it

necessary to send a second message when the customer initiates a data roaming service, if this happens at a later time.

17) There is no requirement for further messages to be sent if the host network changes during a visit to a country. As noted above, in point 11(d), ERG considers that it would be good practice for charges relevant to the new host network to be covered by the initial message”.

Additional detailed personalised pricing information and information on transparency measures

18) Where a customer contacts their home provider regarding further detailed information, the home provider should ensure that the information is immediately available, regardless of time of day. If using automated machines to comply with the obligation, the home provider should ensure that the customer can access the required information speedily and easily.

19) Furthermore, if contacted via SMS, it would be reasonable for the home provider to opt to send only essential personalised pricing information applying to voice calls, SMS, MMS, and other data communication services to its customers, where the detail of charges is complex. In this case, the home provider should make reference in its SMS message to the free of charge number designated for voice calls to get additional information.

20) ERG considers that it is a very important principle that customers are able to monitor, control and give their consent to any expenditure. Article 6a(1) of the Regulation requires providers to ensure that their roaming customers, both before and after the conclusion of a contract, are kept adequately informed of data roaming charges, in ways that facilitate the customers' understanding of the financial consequences of their use and enable them to monitor and control their expenditure on regulated data roaming services. The Regulation also provides that, where appropriate, providers shall inform their customers, before the conclusion of a contract and on a regular basis thereafter, of the risk of automatic and uncontrolled data roaming connection and download. They must also explain to their customers, in a clear and easily understandable manner, how to switch off automatic data roaming connections to avoid uncontrolled consumption of data roaming services. ERG considers operators may meet such information requirements, for example, by providing clear and easily accessible information in the terms and conditions for the service, on their website and in other literature.

21) Additionally, the Recitals to the Regulation say that ‘any network connection should be established with the user’s consent’, ‘there should be no data downloading, including software updating and e-mail retrieval, without the user’s prior consent or request’, unless the user has opted out of this protection (Recital 32), ‘home providers should not charge the roaming customer for any regulated data roaming service, unless and until the roaming customer accepts the provision of the service’ (Recital 32a), and ‘the home provider should give examples for data roaming applications, such as e-mail, picture, web browsing, by indicating their approximate size in terms of data usage’ (Recital 34a). ERG considers providers may meet these policy aspirations, for example, by requiring consent at the time of subscription and by providing clear and easily accessible information in the terms and conditions for the service, on their website and in other literature.

22) Recital 33 provides that ‘there should be no obstacles to the emergence of applications or technologies which can be a substitute for, or alternative to, roaming

services'. ERG understands that the European Council and the European Parliament wish to discourage blocking and to promote the availability of alternative or substitute services to roaming like WiFi, VoIP and Instant Messaging services. To the extent that any obstacles to accessing these alternative or substitute services persist, ERG considers that providers should provide clear and easily accessible customer information at the time of subscription, in the terms and conditions for the service, and on their website and in other literature.

Financial or volume limit on data roaming consumption

23) Article 6a(3) of the Regulation requires providers to make available to their customers one or more financial or volume limits on data roaming use during an agreed specified period, subject to the customer's consent to continue. This is intended to enable customers to avoid running up bills that are higher than intended or expected. 'Customer' is not defined in the Regulation. ERG considers providers may construe it to mean the contracting party or an individual SIM-holder (these may not be the same person in the case of corporate or family contracts, for example). Providers must make it clear who the cut-off limit applies to, to the contracting party or to individual SIM-holders.

24) In the period 1 March 2010 to 30 June 2010, providers must allow customers to select a limit (i.e. during this period the limit is 'opt-in').

25) From 1 July 2010 the limit becomes 'opt-out': providers must apply the default financial limit or default volume limit automatically to all customers who do not already enjoy a limit. ERG urges providers to contact their customers by 1 July 2010 to set out the available cut-off options that customers may choose from that date. Providers may also wish to explain, on their website and in other literature, how the cut-off mechanism will work including how to re-authorise use past the limit if wished, and what will happen to any data in the course of being downloaded if the customer does not wish to continue use when the limit is reached.

26) The default financial limit must be close to but not exceed 50 € of outstanding charges per monthly billing period (excluding VAT). The default volume limit must have a corresponding financial limit not exceeding 50 € of outstanding charges per monthly billing period (excluding VAT). For the default financial limit, providers must make the customer aware in advance of the corresponding amount in volume terms. For the default volume limit, providers must make the customer aware in advance of the corresponding amount in financial terms. Note that the limit relates to the accumulated expenditure per specified period, and not per data session.

27) ERG understands that the European institutions intended that the financial or volume limit must be made available both to post-pay and to pre-pay customers.

28) Some customers pay for data roaming services according to a tariff where data access is bought separately from other mobile services, paid for in advance and for a fixed, pre-defined non-recurring sum and non-recurring duration, after which the data session ends unless and until the customer gives their express consent to resume data access. These customers are automatically protected from bill shock and there is no need to make special arrangements for them. This meets the policy intention behind the Article, because consumers are unable to spend more than they have consented to before starting the connection, giving control. This exception does not apply to any data tariffs that are part fixed and part variable or that recur automatically in price and/or duration, for example a fixed sum for initial period and a

variable rate thereafter, or a daily tariff that recurs until the customer withdraws their consent. A cut-off limit must be available for such tariffs.

29) ERG understands that 'monthly billing period' may refer to a calendar month or another specified monthly period.

30) In addition, providers may make available one or more, higher or lower, financial or volume limits for specified periods of use (i.e. not necessarily per month, for example a daily or weekly limit could be offered); again providing the customer is made aware in advance of the corresponding volume or financial amount, respectively.

31) ERG notes that MMS are included in the definition of 'regulated data roaming service' according to Article 2(2)(k), and are not explicitly excluded from the scope of Article 6a(3). ERG understands that at present it is technically challenging to monitor MMS use alongside other data use. Providers should ensure that consumers are informed about how any MMS expenditure is charged and controlled.

32) When a financial or volume limit is in operation, the Regulation requires providers to send the customer a warning when they have consumed 80% of that limit. The overall policy aim of the limit is to enable customers to monitor and control their expenditure. ERG understands that the type of handset or other device, data service, and content can all affect the speed with which the notification can be sent, and with which it can be received and acted upon by the customer. For example, accessing audiovisual content will generally cause 80% of the limit, and the limit itself, to be reached much more quickly than reading e-mails. ERG considers that providers should set up the sending of notifications so that the customer has time to use the notification to make an informed decision about their expenditure before the final limit is reached. Where there is variation from 80%, providers should seek as a matter of good practice to ensure that the customer receives the message before they reach 80% of their limit rather than after.

33) Although the Regulation does not prescribe how the warning has to be sent to the customer's handset or other device, it must be 'appropriate... for example by an SMS message, an e-mail or a pop-up window on the computer' (Article 6a(3)). ERG considers that providers should choose the means that will maximise the customer's chances of receiving and being able to act upon the notification bearing in mind the device and type of data service used.

34) ERG expects providers will wish to provide customer information on how to continue using data services in the 80% warning notification, in order to give consumers more time to plan and control their use and expenditure. Providers may also wish to indicate what would happen to any data in the course of being downloaded when the limit is reached, if the customer does not wish to continue use beyond that point. If the customer decides to authorise data use after the financial or volume limit in response to the 80% notification, the original limit will be superseded and, for example, it is no longer relevant to send a notification at the end of the original limit.

35) Customers can require their provider to stop sending such notifications, and to start again, free of charge.

36) If the agreed financial or volume limit is reached, the provider is required to send another notification to the customer's mobile handset or other device. The notification must indicate how to continue using data services, if the customer wants to, and the

cost of any additional data units consumed. Providers may also wish to indicate what would happen to any data in the course of being downloaded, if the customer does not wish to continue use. If the customer does not respond as indicated, the provider must immediately 'cease to provide and to charge the roaming customer for regulated data roaming services, unless and until the customer requests the continued or renewed provision of those services' (Article 6a(3)).

37) Some providers have expressed concern that this provision requires them to de-authorise all data roaming services for the customer concerned. The customer would then be required to contact customer services to request re-authorisation of data roaming, which could take a short or a significant amount of time to process. All data in the process of being downloaded or uploaded when the limit was reached would be lost. ERG considers that the policy intention is not for data roaming services to be de-authorised or for consumers to have to enter into a burdensome or lengthy process to resume data roaming use.

38) In all cases, charging must cease when the limit is reached, unless the customer has responded in due time that he does not wish the cut-off to be activated. Regarding the data connection, ERG encourages providers, where possible, to maintain this for a reasonable period after the limit is reached, to give most customers adequate time to receive and respond to the notification, for example by suspending the connection or slowing it to a trickle. Depending on the type of device, data service and content, there may be a delay in the customer's reply, especially where the means of sending the notification does not interrupt the data session itself, for example where an SMS is sent to a mobile handset, as opposed to a pop-up window. If the customer indicates that he or she does not want to continue the data session or remains silent throughout the "reasonable period" for a response, ERG encourages operators to facilitate any subsequent connection to the greatest extent possible, if the customer gives their consent to resume use. ERG also expects that providers will make technically feasible efforts to preserve any data that was in the course of being downloaded for a reasonable period after the limit is reached, so as to allow the customer to resume the download.

39) Lastly, Recital 36 says that the above measures should be seen as 'minimum safeguards for roaming customers', and do not prevent providers from offering additional transparency and bill control measures like flat-rate offers or real-time information on data consumption, which ERG also encourages.

40) ERG recognises that the above financial or volume limits may not be suitable for corporate customers. This may be dealt with in the initial contract or in a contractual amendment for existing customers, for example where the corporate customer could opt-out of the mechanism.

Wholesale issues

Wholesale voice and data roaming caps

41) The caps on wholesale voice and data charges apply to the average charges levied by any one network operator on any other. Charges may differ by time of day and at different times of the year and must be compliant when assessed on a one-year basis.

42) This maximum is an average charge to be calculated over the period of application of the cap. This is usually a 12-month period, but may be a shorter period depending on how long remains before a new cap enters into force or the Regulation

expires. In particular, the wholesale voice cap set on 30 August 2008 must be calculated over a 10 month period as the new voice cap under the amended Regulation is due to enter into force on 1 July 2009.

43) The necessary adjustments should therefore be made to existing voice and data wholesale rates to ensure that the average price cap is met by the end of the relevant period. Network operators should enter into early bilateral negotiations in good faith with a view to adjusting the contractual pricing provisions as soon as possible. The result of such negotiations should provide assurance on both sides that the limits in the Regulation will be respected over the applicable compliance period. ERG believes that 6 months after the Regulation came into effect should be a sufficient timeframe for such negotiations, which should therefore be complete by the end of 2009. One method of achieving this would be for a provider to implement a unilateral price cut so that charges levied after 1 July are transparently consistent with the Regulation.

44) Maintaining wholesale voice charges at their existing level throughout 2009 and much of early 2010, with the intention of making a reduction at a later stage to bring the annual average charge into line with the Regulation, could have a significant adverse effect on cash flow of other operators, given the need to make immediate reductions in retail voice tariffs from Summer 2009, and prevent other operators from offering more competitive or innovative tariffs to consumers. In the absence of an explicit bilateral agreement between the parties, ERG therefore considers this to be an unacceptable commercial practice, notwithstanding that it is not explicitly prohibited by the Regulation.

Example: Provider A maintains existing charges to Provider B until January 2010. In the absence of explicit agreement between the providers, the rates charged by A for February to June 2010 would need to take account of the above-cap rates in the first 6 months. If, for example, the rate charged for the first 6 months were double the regulated maximum, the maximum permissible rate for the second 6 months would be close to zero (subject to pricing elasticity).

45) Where it becomes clear to a provider that overcharging of a wholesale customer over the entire compliance period is likely, on the basis of expected traffic patterns, immediate remedial action should be taken.

Maximum charging intervals

46) The Regulation provides for a maximum charging interval for regulated wholesale and retail voice roaming calls and wholesale data sessions.

Retail voice calls

47) Regulated roaming retail voice calls made and received must be charged on a per second basis. An exception is provided for calls made pursuant to Article 4(2), which allows operators to extend the initial charging period up to a maximum of 30 seconds. This is intended to enable providers to recover any reasonable set-up charges and to compete by offering shorter initial charging periods. The initial charging period of maximum 30 seconds does not apply to calls received, i.e. they must be charged per second only. That is because any set-up costs are considered to be covered by mobile termination rates. Compliance with the Eurotariff caps will be assessed by dividing the relevant revenue received by the amount of time **billed**.

48) The Regulation does not prescribe a minimum or maximum charging interval for other roaming retail voice calls made or received (i.e. alternatives to the Eurotariff).

Wholesale voice calls

49) Article 3 (3) states:

*... with effect from 1 July 2009, the average wholesale charge referred to in paragraph 1 shall be calculated by dividing the total wholesale roaming revenue received by the total number of wholesale roaming minutes actually utilised for the provision of wholesale roaming calls within the Community by the relevant operator over the relevant period, aggregated on a per second basis **adjusted to take account of the possibility for the operator of the visited network to apply an initial minimum charging period not exceeding 30 seconds.***
(emphasis added)

50) This means that at the wholesale level operators must also bill on a per second basis, subject to a minimum initial charging interval of up to 30 seconds. As for Eurotariff revenues, compliance with the wholesale cap will be assessed by dividing the relevant revenue received by the amount of time **billed**.

SMS

51) SMS must be billed per message at the wholesale and retail levels. According to Recital 30, a roaming SMS message must have the same technical parameters as a domestic SMS.

Data

52) The Regulation provides that wholesale data roaming services must be charged on a per kilobyte basis (Article 6a(4)). According to the Regulation, providers may round up the volume of a given session to the nearest kilobyte. In particular, this means that a data session of less than one kilobyte may be charged as a one kilobyte session.

53) For clarity, ERG considers that:

1 kilobyte = 1024 byte = 8192 bit
1 megabyte = 1024 kilobyte.

General issues

Charges for voicemail messages

54) From 1 July 2010, Article 4(2) prohibits charges for voicemail messages that are deposited in the roaming customer's network mailbox by another caller.

55) The home operator is not prevented from levying 'other applicable voicemail charges', for example when the roaming customer listens to a message left in their network mailbox. The transfer to the roaming customer's network mailbox of any voicemail messages that have been left in that customer's non-network mailbox, for example if the customer uses personal numbering, should be considered as a different service to the one described in Article 4(2).

Charges in currencies other than the Euro

56) For SMS and data, the relevant exchange rate for regulated charges in currencies other than the Euro for the first 12 months is the one published in the Official Journal of the European Union (OJEU) on 6 May 2009. For voice, the relevant exchange rate for regulated charges in currencies other than the Euro is the one published in the OJEU on 1 June 2009. In both cases, if no OJEU is published on the applicable date, the relevant exchange rate is the one published in the first OJEU following this date that contains reference exchange rates. Therefore, the relevant exchange rate for voice is the one published in the OJEU of 3 June 2009.

57) For following years, the relevant exchange rate for all regulated roaming charges is the one published in the OJEU on 1 June or, if no OJEU is published on the applicable date, the one published in first OJEU following this date that contains reference exchange rates. (Article 1(4) and Recital 8a).

58) The maximum retail caps for the Eurotariff and the Euro-SMS and the wholesale average caps for voice, SMS and data should be calculated to the maximum number of decimal places permitted by the official exchange rate. This sets the maximum that can be charged in the national currency. Providers may wish in practice to quote charges in whole numbers of currency units, especially at the retail level, although this in practice is not compulsory. In this case, the numbers should be rounded down. Rounding up of these numbers to above the level of the relevant cap is not permitted under any circumstances.

Scope of regulated roaming call

59) For the purposes of Articles 3, 4 and 6 of the Regulation, a "regulated roaming call" comprises only voice calls and does not include FAX or data calls (e.g. using VoIP over a mobile Internet connection).

Scope of regulated data roaming services

60) Regulation (EC) No 544/2009 extends the scope of the first Roaming Regulation (EC) No 717/2007 to *data roaming services*. The definition of such a service is provided in Article 2.2(k):

“regulated data roaming service' means a roaming service enabling the transmission or receipt of packet switched data communications by a roaming customer by means of his mobile telephone or other mobile device while it is connected to a visited network. A regulated data roaming service does not include the transmission or receipt of regulated roaming calls or SMS messages, but does include the transmission and receipt of Multimedia Messaging Service (MMS) messages.”

61) From the examples provided for in Recital 34a, it is clear that applications like “*email, pictures or web-browsing*” should be considered as data roaming applications. Therefore, the transmission and receipt of such data should be covered as “regulated data roaming services” when they are provided to a roaming customer on a visited network. ERG also considers VoIP calls over a mobile network should be considered a regulated data roaming service.

62) ERG notes that this definition is technology-neutral in that it applies irrespective of the radio spectrum used (2G, 3G...). Nevertheless, regulated data roaming services should not include services provided through a WiFi connection, as a WiFi

network is not a *mobile* network. According to the above definition, the Regulation applies when a roaming customer is connected to a visited “*terrestrial public mobile network*”. Recital 33 also makes a distinction between roaming services and WiFi, as the latter might be “*a substitute for, or alternative to, roaming services*”.

Value-added services

63) ERG considers that a value-added service is a premium rate service (PRS) where the charge for the voice call or SMS or data transmission is bundled with the price of a specific service being purchased, e.g. a ring tone or a song, and that bundled price is fully billed by and paid to the roaming customer's home provider.

64) In relation to the price regulation of voice roaming services, Recital 19 of the first Roaming Regulation (EC) No 717/2007 states: “This regulatory approach should not apply to value added services.” The amended Regulation makes that exemption in relation to value added SMS services only (Recital 26). However, ERG understands the policy intention is for the exemption to continue to apply to regulated voice roaming services under the amended Regulation.

65) The Regulation provides no explicit exclusion for value-added data services but in any case, since there is no retail price regulation of data roaming services, the considerations are different. Where the content or premium service is billed and paid separately to a third party provider, this does not meet the ERG's understanding of a value added data service and only the price or volume of the data transmission itself should be counted towards the financial or volume limit provided according to Article 6a(3). ERG considers that consumers are likely to see only the data transmission element as a ‘mobile’ service, because that is all they buy and receive from the mobile provider.

66) However, where the customer pays a bundled price to the mobile service provider, covering both transmission and the premium service, an allowance needs to be counted against the customer's cut-off limit. This applies both to MMS and data downloads. ERG considers that the most straightforward approach, and the one most likely to conform to customer expectations, is for the full price or volume to be counted towards the financial or volume limit. Depending on the characteristics of the agreement, this could include revenue-sharing agreements between a mobile provider and a content provider. ERG considers that consumers are likely to see this primarily as a ‘mobile’ service, given that they pay only their mobile provider in a single transaction. In any case, providers should ensure that consumers are informed about how any value-added expenditure is charged and controlled.

Roaming calls made to/from ships or planes

67) The Regulation does not apply to communications to or from ships or planes using satellite networks.

Machine to machine communications

68) ERG understands that some companies, for example utility companies, may have mobile SIM cards installed in their equipment to send automatically generated data to another piece of equipment ('machine to machine communications'), for example SIMs may be used in goods lorries to send automatic location data back to a control centre. Some companies may also use SIM cards in specific devices that allow employees to have access remotely to specific software, for instance for on- and off-site data collection, but such devices do not offer access to voice, SMS or

standard data communications. In some cases, the SIM will be roaming in another Member State. ERG notes that there appears to be no exemption from the Roaming Regulation for such communications. Nevertheless, contracting companies may choose to opt-out of the Regulation's provisions if they consider them irrelevant or unnecessary (e.g. the financial or volume limit on data expenditure), and may do so in the initial contract to provide the communications service, for example.

Geographical scope of the Regulation

69) The Regulation applies to calls made and received within the EU. ERG is aware that GSM Europe has prepared a table outlining its understanding of the inclusion/exclusion of various offshore territories of the EU, including the Outermost Regions defined in Article 299 of the Treaty. ERG has reviewed this table and has no comments on it. However, it should be noted that Article 299 of the EU Treaty sets out the definitive position; market players are strongly advised to consult the EU Treaty in this regard.

Application in EEA Member States

70) The scope of the amended Roaming Regulation is expected to be extended to the European Economic Area (EEA) Member States (Norway, Iceland and Liechtenstein), pursuant to the EU/EEA Agreement. Until it enters into force in those countries the first Roaming Regulation (EC) No 717/2007 will continue to apply, including the wholesale and retail voice caps, the dates for revising those caps and the transparency measures set out in that Regulation.

71) Further information on application of the Roaming Regulation in EEA Member States is available from the EFTA Secretariat website at <http://secretariat.efta.int/>