



House of Commons
European Scrutiny Committee

**Sixty-first Report of
Session 2010–12**

Documents considered by the Committee on 27 March 2012

*Report, together with formal minutes, minutes
of evidence and appendices*

*Ordered by The House of Commons
to be printed 27 March 2012*

Notes

Numbering of documents

Three separate numbering systems are used in this Report for European Union documents:

Numbers in brackets are the Committee's own reference numbers.

Numbers in the form "5467/05" are Council of Ministers reference numbers. This system is also used by UK Government Departments, by the House of Commons Vote Office and for proceedings in the House.

Numbers preceded by the letters COM or SEC are Commission reference numbers.

Where only a Committee number is given, this usually indicates that no official text is available and the Government has submitted an "unnumbered Explanatory Memorandum" discussing what is likely to be included in the document or covering an unofficial text.

Abbreviations used in the headnotes and footnotes

EC	(in "Legal base") Treaty establishing the European Community
EM	Explanatory Memorandum (submitted by the Government to the Committee)*
EP	European Parliament
EU	(in "Legal base") Treaty on European Union
GAERC	General Affairs and External Relations Council
JHA	Justice and Home Affairs
OJ	Official Journal of the European Communities
QMV	Qualified majority voting
RIA	Regulatory Impact Assessment
SEM	Supplementary Explanatory Memorandum
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Euros

Where figures in euros have been converted to pounds sterling, this is normally at the market rate for the last working day of the previous month.

Further information

Documents recommended by the Committee for debate, together with the times of forthcoming debates (where known), are listed in the European Union Documents list, which is published in the House of Commons Vote Bundle each Monday, and is also available on the parliamentary website. Documents awaiting consideration by the Committee are listed in "Remaining Business": www.parliament.uk/escom. The website also contains the Committee's Reports.

* Explanatory Memoranda (EMs) can be downloaded from the Cabinet Office website:
<http://europeanmemorandum.cabinetoffice.gov.uk/search.aspx>.

Letters sent by Ministers to the Committee relating to European documents are available for the public to inspect; anyone wishing to do so should contact the staff of the Committee ("Contacts" below).

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1 Mobile phone roaming charges

(a) (33007) 12666/11 + ADDs 1–2 COM(11) 407	Commission Report on the outcome of the functioning of Regulation (EC) No 717/2007 of 27 June 2007 on roaming on public mobile communications networks within the Community, as amended by Regulation (EC) No 544/2009
(b) (33008) 12639/1/11 COM(11) 402	Draft Regulation on roaming on public mobile communications networks within the Union (Recast)

<i>Legal base</i>	(a) — (b) article 289 (1) TFEU; ordinary legislative procedure; QMV
<i>Department</i>	Culture, Media and Sport
<i>Basis of consideration</i>	Minister's letter of 22 March 2012
<i>Previous Committee Reports</i>	HC 428–lii (2010–12), chapter 8 (29 February 2012) HC 428–xlvi (2010–12), chapter 8 (18 January 2012) and HC 428–xxxvi (2010–12), chapter 4 (14 September 2011)
<i>Discussion in Council</i>	To be determined
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; further information now provided; Minister authorised to join political agreement if appropriate; further information requested

Background

1.1 The mobile telephone roaming market in the EU has been regulated since June 2007 by two Roaming Regulations. The first — which covered solely voice traffic — was introduced in June 2007 and sought to address issues related to a situation that favoured domestic use (intra-State) compared to cross-border use (roaming), resulting in roaming prices substantially above costs. The overall aim was an internal market, with greater consumer protection, greater competition and greater transparency.

1.2 A review of this first regulation led to amendments in June 2009, extending both scope — SMS (text) and wholesale-level data roaming services are now also regulated — and duration of the Regulation (now known colloquially as Roaming II) until June 2012.

1.3 A year later, a further interim Commission review concluded that “Roaming II” had generally been well implemented, with decreased voice and SMS prices, as well as increased transparency. But whilst wholesale data prices had decreased, consumers were yet to reap the benefit fully at the retail level; competition in the roaming markets had not developed

sufficiently; and structural problems within the market remained (see paragraphs 1.4–1.8 of this chapter). The Commission accordingly said that it would produce a full review of the functioning of Roaming Regulation by 30 June 2011; this would assess whether the objectives of the Regulation had been achieved, and consider whether price regulation or any other mechanism should remain in place, or whether the Regulation should be allowed to expire in 2012. A full review was promised by 30 June 2011.

The Commission report and the draft Regulation

1.4 The first document is the report of that review; the second is an amended “Roaming II”, which embodies the Commission’s proposals.

The Commission report

1.5 The Commission report is summarised in detail in paragraphs 4.9–4.24 of our Forty-first Report.¹ A central consideration is that the EU Digital Agenda includes a Key Performance Target for international mobile roaming services — that the difference between roaming and national tariffs “would approach zero by 2015”.

1.6 The Commission proposes revising the Regulation by introducing pro-competitive structural measures and extending its validity until 30 June 2022. The details of the Commission’s proposals are set out in our earlier Reports but in essence are as follows.

Mandate the separate sale (“decoupling”) of roaming services in the domestic market

1.7 The Commission proposes that consumers be allowed to opt-out of the default roaming services offered by their domestic service provider and choose an alternative home operator for roaming services only; thus, each time the customer roams, the retail roaming service would automatically switch to this alternative provider.

Improve market entry by mandating wholesale roaming access

1.8 To be fully effective, the Commission says that “decoupling” needs to be combined with an access obligation that will facilitate market entry by existing and new players, including cross-border roaming service providers. The Commission accordingly proposes introducing an obligation on network operators to meet all reasonable requests for wholesale access for the provision of roaming services.

Retain a transitional safety net for retail prices up to 30 June 2016, including a new retail price cap on data roaming services

1.9 The retail safeguard caps mechanism would be extended to data roaming services. They would “follow a glide path until the structural solutions are in place (in 2014)”, after which the safeguard caps would remain flat for up to a further two years, until 30 June 2016. The retail caps would be removed thereafter or before if market data indicated that competition

1 See headnote: HC 428–xxxvi (2010–12), chapter 4 (14 September 2011).

had developed sufficiently. A review in 2015 would evaluate whether the proposed structural measures were sufficient to promote competition, and whether it was necessary to modify them or to extend the duration of any of the transitory retail caps.

Maintain price caps on wholesale charges until 2022

1.10 The price caps on wholesale charges would be retained and likewise “follow a steep decreasing glide path on a yearly basis” up to 30 June 2015, after which they would remain flat until the new Regulation expired in 2022 (and could be removed before the new Regulation expires if market data indicate that competition has developed sufficiently).

The draft Regulation

1.11 In his Explanatory Memorandum of 21 July 2011, the Minister for Culture, Communications and Creative Industries (Mr Edward Vaizey) provided a detailed overview of the draft Regulation (see paragraph 4.24–4.28 of our Forty-first Report).²

The Government’s view

1.12 The Minister welcomed the benefits to consumers and businesses of Commission efforts to reduce the cost of roaming, particularly in relation to voice and SMS. He saw greater merit in obliging network operators to allow wholesale access for the provision of roaming services than in “decoupling” roaming services in the domestic market. He judged it unlikely that consumers would be in a position (when signing a domestic mobile contract) to make sound and informed decisions about any roaming package which they might only use on a very limited number of occasions. He wanted to make certain that any changes were fair both to business and consumers alike and did not impose costs on the former that might jeopardize investment decisions or be detrimental to the most vulnerable consumers, many of whom used more expensive prepaid services. Therefore, he said, the Commission’s proposed 2015 review date might come too soon for the impact on competition of either of the proposed structural solutions to be evident, and lead to decisions being made without a compelling or complete evidence base; he would therefore push the Commission to reconsider that date. He rejected the “waterbed argument” (if prices were reduced in one area, prices needed to rise in others to compensate) put forward by some providers to justify a reluctance to reduce roaming charges in relation to voice and SMS previously; the scope for growth in the data roaming market as a consequence of both the price cap and whichever structural solution was adopted would, the Minister said, more than compensate for any revenue squeeze. In the absence of any strong arguments against, the Minister accepted the need for a price cap as a short term measure whilst the proposed structural solutions took effect.

1.13 The Minister also expressed his broad agreement with the Commission’s “totemic policy ambition” of completion of the digital single market (DSM). This and the second aim, of as small a differential between domestic and roaming costs by 2015 as possible were, he said, both “new drivers in the context of the history of the Regulation.” Noting that there was “a fair amount of political impetus to drive forward the Regulatory

2 See headnote: HC 428–xxxvi (2010–12), chapter 4 (14 September 2011).

