

Open internet access

2013/0309(COD) - 02/10/2015 - Council position

The Council's position at first reading first reading concerning the European single market for electronic communications focused on two core issues: roaming and net neutrality, including the consumer rights related to each of these issues.

The Regulation aims at establishing common rules to safeguard equal and non-discriminatory treatment of traffic in the provision of internet access services and safeguarding end-users' rights.

In the field of roaming, the 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.

The main elements of the compromise reached with the European Parliament are outlined below:

Roaming: under the compromise, retail roaming surcharges in the European Union will be abolished as of 15 June 2017. However, the compromise defines two situations when the application of surcharges is still authorised, subject to specific criteria:

1. roaming providers will be able to apply a 'fair use policy' to prevent abusive or anomalous usage of regulated retail roaming services. Once the fair use policy has been exceeded, a surcharge may be applied. The surcharge cannot be higher than the maximum wholesale charges. The detailed rules on the application of the fair use policy will be defined by the Commission in an implementing act by 15 December 2016.

2. with a view to ensuring the sustainability of the domestic charging model, in specific and exceptional circumstances, where roaming providers will not be able to recover overall costs of providing regulated roaming services from overall revenues of providing such services, they, subject to the authorisation by the national regulatory authority, may apply a surcharge, but only to the extent necessary to recover those costs.

The abolition of the roaming surcharges of 15 June 2017 is subjected to the adoption by that date of a legislative proposal amending the maximum wholesale charges currently regulated under [Regulation 531/2012](#) or providing for another solution to address issues identified at wholesale level. The Commission, before submitting such a legislative proposal, is required to conduct a review of the wholesale roaming market with a view to assessing measures necessary to enable abolition of retail roaming surcharges.

In order to ensure a smooth transition to the abolition of roaming surcharges, the compromise provides for a transitional period, which will start as of 30 April 2016. From this date roaming surcharges will be significantly reduced. The maximum surcharge will then be limited to the current maximum wholesale charges laid down in Regulation 531/2012. For calls received, the maximum surcharge will be the weighted average of maximum mobile termination rates across the EU, to be set out by the Commission by means of an implementing act by the end of 2015.

Network Neutrality: providers will be required to 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.

They may use reasonable traffic management measures, but such measures must be transparent, non-discriminatory, proportionate and not be based on commercial considerations. Traffic management measures must not monitor specific content and must not be maintained longer than necessary. Measures going beyond such reasonable traffic management (for example, blocking or throttling) will be prohibited, except for a limited number of cases defined in the Regulation.

Agreements on services requiring a specific level of quality will be allowed, provided that those services are not usable or offered as a replacement for internet access service and they are not to the detriment of the availability or general quality of internet access services for end users.

End-users' rights: the provisions on safeguarding of open internet access and roaming are complemented by end-users' provisions which, in particular, enable end-users to make informed choices. For example:

- in relation to network neutrality, providers of internet access services should: (i) inform end-users in a clear manner about how traffic management practices and any services other than internet access services may impact on the quality of the internet access service; (ii) inform end- users of the speed normally available and the remedies in case of non-compliance;
- in the area of roaming, the compromise stipulates that customers will need to be notified about the applicable fair use policy or when consumption volumes are reached.