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COMMISSION DELEGATED REGULATION (EU) …/...

of 18.12.2020

supplementing Directive (EU) 2018/1972 of the European Parliament and of the Council by setting a single maximum Union-wide mobile voice termination rate and a single maximum Union-wide fixed voice termination rate

(Text with EEA relevance)

{SWD(2020) 333 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Legal basis and objective of the proposed action

This Delegated Regulation sets a single maximum Union-wide mobile voice termination rate and a single maximum Union-wide fixed voice termination rate, which will be applicable to any provider of fixed and mobile termination services across the Union. Voice termination rates are the wholesale rates that electronic communications operators charge each other to terminate voice calls on their respective networks.

Article 75 of the European Electronic Communications Code[1] (EECC or the Code) requires the Commission to adopt a Delegated Act setting a single maximum Union-wide mobile voice termination rate and a single maximum Union-wide fixed voice termination rate by 31 December 2020. Article 75 provides that in setting the single maximum Union-wide voice termination rates the Commission must comply with the principles, technical criteria and parameters provided in Annex III. Articles 75(2) and 75(3) EECC require the Commission to review the Delegated Act every five years and on each such occasion to consider whether the imposition of single maximum Union-wide voice termination rates remains necessary.

The objective of this Delegated Act is to achieve the full harmonisation of fixed termination rates (FTRs) and mobile termination rates (MTRs) which will enhance the development of the internal market and significantly reduce intra-Union trade barriers among Member States. Moreover, given that the National Regulatory Authorities (NRAs) will not be competent anymore to regulate termination rates for these services, in the presence of regulation of these rates at Union level, and will, therefore, not be required anymore to build cost models to calculate efficient rates and regularly update them, the Delegated Act will significantly reduce the administrative burden for them.

General context of the Delegated Act

MTRs and FTRs have been regulated in the Union for around 20 years. The markets for mobile and fixed termination were included by the Commission in the 2003 Recommendation providing a list of markets susceptible to ex ante regulation[2] ("Recommendation on relevant markets"). The Commission recommended NRAs to continue regulating these markets in the subsequent Recommendations on relevant markets adopted in 2007[3] and 2014[4]. It is however to note that termination markets will not be included in the list of markets susceptible to ex ante regulation in the new Recommendation on relevant markets that is adopted in parallel with this Regulation by December 2020 as the application of the Union-wide voice

1 Directive (EU) 2018/1972 of the European Parliament and of the Council establishing the European Electronic Communications Code, OJ L 321, 17.12.2018, p. 36.

2 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 of the Council on a common regulatory framework for electronic communication networks and services, (2003/311/EC), OJ L 114/45, 08.05.2003.

3 Commission Recommendation of 17 December 2007 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 of the Council on a common regulatory framework for electronic communications networks and services, (2007/879/EC), OJ L 344/65, 28.12.2007.

4 Commission Recommendation of 9 October 2014, 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 of the Council on a common regulatory framework for electronic communications networks and services, (2014/710/EU), OJ L 295/79, 11.10.2014.

termination rates as set out in this Regulation will limit the ability of mobile and fixed operators to set excessive termination rates. As a result, the termination markets would no longer meet the three-criteria test at Union level.

In 2009, the Commission adopted a Recommendation on the regulatory treatment of fixed and mobile termination rates in the Union (Termination Rates Recommendation)[5]. The Termination Rates Recommendation aimed at ensuring the harmonised application of the price-control obligation set in Article 13 of the Access Directive[6]. The Termination Rates Recommendation provided a common methodology for the calculation of cost oriented termination rates which only allowed the recovery of costs as would be incurred by an efficient operator (the so called 'pure Bottom-Up Long Run Incremental Costs' model, 'pure BU-LRIC'[7]). An Evaluation Report[8] on the Termination Rates Recommendation published in 2018 concluded that divergences in the level of termination rates persist in the Union, and that they are detrimental to the fostering of the internal market, distort competition and undermine the predictability of regulation and legal certainty within the Union.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Public open consultation[9]

Article 75 of the Code establishes that the single maximum Union-wide termination rates shall be imposed on 'any provider of mobile voice termination or fixed voice termination services' in the Union and defines in the relevant Annex the principles, criteria and parameters that the Commission should follow for their setting. It however leaves certain aspects of the implementation of the single maximum Union-wide voice termination rates to the Delegated Act, such as for example the exact definitions of the services to which it shall apply or the use of a transitional period to allow adjustments in Member States where this is necessary based on rates previously imposed.

The consultation has solicited the views of providers of electronic communication networks and services, NRAs, the Body of European Regulators for Electronic Communications (BEREC) and other stakeholders, such as government authorities and industry associations, consumer associations, think tanks, academics, law firms, consultancies and citizens.

The consultation ran for 12 weeks, from 26 July to 8 November 2019, via a questionnaire available on the European Commission's public consultation portal. The goal of the consultation was to collect feedback and views on the implementation aspects of the single

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5 Commission Recommendation 2009/396/EC of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (Termination Rates Recommendation), OJ L 124, 20.5.2009, p.67.

6 Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), OJ L 108, 24.04.2002, p. 7, as amended by Directive 2009/140/EC, OJ L 337, 18.12.2009, p. 37.

7 The pure BU-LRIC approach provides that cost accounting for wholesale call termination services in fixed and mobile markets should only allow the recovery of the costs that would be avoided if a wholesale call termination service was no longer provided to third parties.

8 Commission Staff Working Document, Evaluation Report on the Commission's 2009 Recommendation on Termination Rates (Recommendation 2009/396/EC) {SWD(2018) 464 final}. https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=57662

9 A summary report and the full responses to the public consultation were published on 11 December 2019. They are available here: https://ec.europa.eu/digital-single-market/en/news/summary-report-public-consultation-voice-call-termination-rates
A synopsis report was published on 13 June 2020. It is available here: https://ec.europa.eu/digital-single-market/en/news/synopsis-report-open-consultation-setting-maximum-union-wide-voice-termination-rates

maximum Union-wide voice termination rate, in order to ensure a consistent, predictable, efficient and transparent implementation. The consultation included technical questions mainly addressed to stakeholders with significant experience in the market, such as NRAs, BEREC, industry and consumer associations and operators. It also included further implementation questions, such as the need for a transitional period in the different Member States, the need for non-price related obligations or how to best achieve cost-efficient single maximum Union-wide voice termination rates over time.

There were 68 respondents, including 32 companies (mostly operators), six business associations, 19 EU citizens, one non-EU citizen, nine public authorities (NRAs, Ministries and BEREC) and one non-governmental organisation. The replies came from 22 Member States. Three companies from outside the European Economic Area (EEA) replied to the questionnaire. Some respondents registered in the EU are currently controlled by shareholders from non-EU countries. Some replies came from subsidiaries of the same economic group.

Consultation with Member States (Expert Group)

The Informal Expert Group on EU Voice Call Termination Rates was established on 6 November 2019 in order to assist the Commission with the preparation of the Delegated Act setting the single maximum Union-wide voice termination rates. The first meeting of the Expert Group, formed by representatives of NRAs, took place in Brussels on 10 February 2020.[10] The following Member States were represented: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Finland, France, Hungary, Ireland, Italy, Lithuania, Malta, Netherlands, Poland, Portugal, Romania, Slovenia and Sweden. At the meeting, the following topics were discussed: definition of termination services, hybrid services, glide path and transitional period, calls originated from third country-numbers, and non-price obligations. Following the meeting, 18 members submitted a written response to the list of questions sent to them after the meeting.

The second meeting of the Expert Group took place by video conference on 11 September 2020.[11] The following Member States were represented: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, France, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden. The Group discussed the draft Delegated Act and accompanying Staff Working Document, made available by the Commission services, in particular the following aspects: inclusion of associated facilities in the definition of termination services, treatment of calls to non-geographic numbers other than mobile, the criteria for the inclusion of calls originated from third country-numbers in the scope of the Delegated Act and the implementation of the single maximum Union-wide fixed and mobile voice termination rates. Following the meeting, 12 Members submitted a written contribution summarising or expanding the feedback provided at the meeting.

Revised drafts of the Delegated Act and Staff Working Document were shared with the Expert Group on 11 November 2020. Several members provided comments by 18 November and the final drafts were shared with the Expert Group on 7 December 2020.

BEREC opinion

BEREC delivered its opinion on the draft Delegated Act (submitted on 29 July 2020 together with the accompanying Staff Working Document) on 15 October 2020.

[10] Minutes of the 1st meeting of the Expert Group are available here.
[11] Minutes of the 2nd meeting of the Expert Group are available here.

BEREC agreed with the proposed definition of termination services based on the number called and suggested that the Delegated Act should clarify that "calls originating and terminating in the Union" should refer to calls from and to numbers in national numbering plans of Member States, not to the physical location of the calling or called party.

BEREC considered that if the Commission were to maintain associated facilities in the definition of termination services, and as they were not explicitly included in the cost model, it should ensure that their costs are covered by the safety margin added to the results of the cost model, in order to ensure cost recovery.

In relation to the inclusion of non-geographic numbers other than mobile in the scope of the Delegated Act, BEREC found that such inclusion was not justified given that calls to most of these numbering ranges, in particular for value added services (VAS) do not have "termination monopoly" characteristics and therefore rate regulation would not be warranted. For certain other non-geographic numbers, such as those for fixed nomadic or to access emergency services, BEREC agreed that price regulation may still be justified.

BEREC agreed with the level of the single maximum Union-wide termination rates and with the proposed implementation mechanism (glide path for mobile, transitional period for fixed).

BEREC also supported the provision including all incoming calls from third countries with rates equivalent to Union-wide termination rates in the scope of the Delegated Act, although it pointed out that there are implementation issues that could seriously impair the widespread applicability of this article, such as the provision of verifiable information about termination rates applied in third countries.

Finally, BEREC highlighted that non-price remedies are still necessary to ensure effective competition in markets downstream of termination markets and that it is indispensable that the Commission consider the latest known rates for all Member States before the Delegated Act enters into force.

Article 75 of the Code establishes that the Commission must take utmost account of the BEREC opinion.

'Have Your Say!' feedback

From 25 August until 22 September 2020, stakeholders were invited to provide feedback on the draft Delegated Act published on the Commission's portal 'Have Your Say!'. 49 submissions were received: 29 from operators, 12 from industry associations, 2 from NRAs (UKE, NMHH), 1 from the German Federal Ministry for the Economy and Energy and 5 from citizens (anonymous). Some undertakings submitted more than one reply (e.g. O2 CZ and O2 SK). All replies are public.[12]

Large operators generally ask for higher rates and longer glide paths, some criticising the underlining cost model and pointing towards unfavourable investment climate and economic consequences of COVID-19 pandemic. Alternative operators and MVNOs strongly support the proposed rates. Fixed operators, especially in Member States with high fixed termination rates, requested higher fixed termination rates. The Hungarian NRA is generally supportive of the draft DA but asks for some clarifications, while the Polish NRA mostly stresses the need for a longer adjustment period. The German Federal Ministry of the Economy and Energy asks, in light of the COVID-19 situation, for a review of the cost model and for a longer implementation period.

[12] Please see https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/1958-Voice-call-termination-rates-in-the-EU-Eurorates-

Cost model consultation

Taking account of the particular characteristics of voice termination markets, the Code requires that the costs of termination services are calculated on the basis of forward-looking long-run incremental costs (LRIC) methodology. LRIC models include only those costs which are caused by the provision of a defined increment. An incremental cost approach allocates only efficiently incurred costs that would not be sustained if the service included in the increment was no longer produced (i.e. avoidable costs) and in that way promotes efficient production and consumption and minimises potential competitive distortions.

In order to assess the costs of providing wholesale termination services in the Union for the purposes of the Delegated Act and in accordance with the requirements set out specifically in Annex III of the Code, the Commission services commissioned two independent cost studies to an external consultant: one for mobile[13] and one for fixed[14] networks. The aim was to construct two separate cost models, estimating the wholesale costs of providing mobile and fixed termination services respectively.

The mobile cost model was developed from mid-March 2018 to mid-July 2019 and the fixed cost model from September 2018 to November 2019. The studies built 28 models with a similar structure, based on country-specific input where relevant, facilitating as much as possible the estimation of the relevant mobile/fixed wholesale costs in each of the countries, for which they were developed.[15] The models rely on country-specific input where relevant and, where not, on averages/common values across the EU/EEA. The mobile cost model was published on 24 July 2019 and the fixed cost model on 26 November 2019.

The cost models had been extensively consulted with NRAs, operators and other stakeholders. These included workshops and consultations organised over the whole period of the process. Stakeholders were also consulted on the structure and content of the data gathering exercise itself and a steering committee composed by experts from NRAs was established for both projects, which met regularly with the Commission services and the consultant.[16]

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Appropriate instrument

Given the aim of the Delegated Act of setting a single maximum Union-wide mobile voice termination rate and a single maximum Union-wide fixed voice termination rate on any provider of mobile voice termination or fixed voice termination services, the most appropriate instrument is a delegated regulation that would apply directly to providers of mobile and fixed voice termination services. Such an instrument would also avoid unnecessary delays in implementation, which may arise in case of delays in the adoption of transposition measures.

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13 Study SMART 2017/0091: "Assessment of the cost of providing mobile telecom services in the EU/EEA countries", Axon Partners Group Consulting, published on 24 July 2019, available here.

14 Study (SMART 2018/0014): "Assessment of the cost of providing wholesale voice call termination services on fixed networks in the EU/EEA countries", published on 26 November 2019, available here.

15 Out of 31 EU/EEA countries that were initially included, due to data availability, only 28 cost models were constructed. Iceland, Liechtenstein and Luxembourg decided not to participate in the data collection process for the mobile cost model. Finland, Iceland and Liechtenstein did not participate in the data collection process for the fixed cost model.

16 For the mobile cost model, members of the Steering Committee also comprised experts from the BEREC Roaming Expert Working Group, since the mobile cost model also estimated roaming wholesale costs.

Summary

The Delegated Regulation consists of the following main elements.

It provides definitions of mobile and fixed voice termination service whereby the central element of the termination service is the number called, namely a number in national numbering plans corresponding to E.164 country codes for geographic areas belonging to the territory of the Union. The number called is also the element for classifying a given termination service as fixed (for calls terminated on geographic numbers or non-geographic numbers other than numbers for mobile services that behave as "traditional" termination services where there is a termination monopoly, i.e. fixed nomadic and emergency access numbers) or mobile (for calls terminated on mobile numbers). Termination services include services provided through any technology used to terminate calls by the termination provider and requires that this provider has legal and technical control of the number and interconnects with at least one network other than its own. These services do not include associated facilities, except interconnection ports. Machine to Machine (M2M) communication is not included in the definition, as the services provided over M2M-specific numbering ranges are not used for interpersonal communications –a condition that should be met to fall within the scope of this Regulation- but for communications between machines.

The rates set out in this Regulation apply to calls originated from and terminated to a Union-number, that is to say a number included in national numbering plans corresponding to E.164 country codes for geographic areas belonging to the territory of the Union. The rates do not apply to calls originated from third country-numbers (numbers other than Union-numbers) unless those calls are originated (i) by a third-country provider of termination services which applies for calls originated from Union-numbers and terminated in its network termination rates equal or below the maximum (mobile and/or fixed) termination rates set out in the Delegated Act, or (ii) from a number from the national numbering plan of a third country, listed in the Annex to this Regulation, where the termination rates are set based on cost model principles that are equivalent to those set out in Article 75 and Annex III of the Code.

The final cost-efficient voice termination rate is based on the result of the cost models developed by the consultant following the principles, criteria and parameters defined in Article 75 and Annex III of the Code, taking as a reference the highest-cost country, as resulted from the cost model, plus a safety margin, which allows for cost recovery in all Member States. The final cost-efficient rates are EUR 0.2 cent/min for the single maximum Union-wide mobile voice termination rate and EUR 0.07 cent/min for the single maximum Union-wide fixed voice termination rate.

Given that current mobile voice termination rates are on average significantly higher than the cost-efficient rate, this Regulation includes a three-year glide path that will facilitate a smooth application of the cost-efficient rate, during which the providers from the Member States subject to the glide path may apply different rates than the single maximum Union-wide mobile termination rate. During the glide path period, the maximum mobile voice termination rates shall be EUR 0.7 cent in 2021, EUR 0.55 cent in 2022, EUR 0.4 cent in 2023 and reaching the single maximum Union-wide mobile voice termination rate of EUR 0.2 cent from 2024 onwards.

In some Member States current regulated maximum mobile voice termination rates are below the mobile voice termination rates set for 2021, 2022 and 2023 as a result of the glide path, and close to the single maximum Union-wide mobile termination rate. In order to avoid potential increases in retail prices in those Member States, resulting from a temporary increase of regulated mobile termination rates, it should be possible to continue applying the current regulated mobile voice termination rates in those Member States until the year where the maximum mobile termination rate set by this Regulation for that year is at a level equal or below those Member States' current termination rates for that year, with the exception of Cyprus, which currently applies EUR 0.17 cent. The mobile voice termination rate in Cyprus may increase from current EUR 0.17 cent to the final efficient rate of EUR 0.2 cent already from the start of application of this Regulation in 2021.

This means that in 2021, the maximum mobile voice call termination rates shall remain at their current level (expressed in euro for comparison) in: Sweden (EUR 0.207 cent), Portugal (EUR 0.36 cent), Malta (EUR 0.4045 cent), Ireland (EUR 0.43 cent), Hungary (EUR 0.474 cent), Denmark (EUR 0.517 cent), Netherlands (EUR 0.581 cent), Croatia (EUR 0.596 cent), Greece (EUR 0.622 cent), Spain (EUR 0.64 cent) and Italy (EUR 0.67 cent). In the following years (2022-2023), the glide path rate will start to apply in these Member States when it reaches a level at or below the current mobile termination rates in these Member States From 2024 onwards, the single maximum Union-wide mobile termination rate of EUR 0.2 cent shall apply in all Member States.

As regards <u>fixed voice termination rates</u>, given that the current average of regulated fixed termination rates (excluding the two outliers Poland and Finland) is close to the final cost-efficient rate, this Regulation does not provide for a glide path. Instead, due to the considerable differences between the current fixed termination rates and the final cost efficient rate, the Regulation includes a transitional period during 2021. The transitional period allows a gradual adjustment to the single maximum Union-wide fixed voice termination rate.

Granting a transitional period is justified where the current fixed voice termination rates are significantly higher than the single maximum Union-wide fixed voice termination rate. In all Member States but two where the current fixed voice termination rates are above EUR 0.0875 cent (the single maximum Union-wide fixed voice termination rate plus 25%), the maximum fixed voice termination rate in 2021 should be equal to their current rates decreased by 20%. In Poland and Finland, which have not so far followed the principles set out in Commission Recommendation 2009/396/EC[17] and currently have very high fixed termination rates, a decrease of 20% would be an insufficient step towards the single maximum Union-wide fixed voice termination rate. Therefore, their rate for the transitional period should be that of the Member State with the highest rate during the transitional period, excluding those two Member States. The resulting transitional rates (expressed in euro for comparison) are: Austria (EUR 0.089 cent), Belgium (EUR 0.093 cent), Croatia (EUR 0.075 cent), Czechia (EUR 0.099 cent), Finland (EUR 0.111 cent), Latvia (EUR 0.076 cent), Lithuania (EUR 0.072 cent), Luxembourg (EUR 0.110 cent), Netherlands (EUR 0.111 cent), Poland (EUR 0.111 cent), Romania (EUR 0.078 cent) and Slovakia (EUR 0.078 cent).

In Member States where a 20% reduction results in a rate at or below the cost-efficient final rate of EUR 0.07 cent, no transitional rate is necessary. Therefore, the rates in those Member States in 2021 shall be at the level of the single maximum Union-wide fixed voice termination rate.[18]

This Regulation refers only to a price obligation imposed on the providers of voice termination services. Non-price obligations imposed by NRAs when regulating markets in their territory, are outside the scope of this Regulation.

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17 Commission Recommendation 2009/396/EC of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (OJ L 124, 20.5.2009, p. 67).

18 This applies to Bulgaria, Slovenia, Hungary, France and Estonia where a 20% reduction will bring them at or below EUR 0.07 cent.

COMMISSION DELEGATED REGULATION (EU) …/...

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supplementing Directive (EU) 2018/1972 of the European Parliament and of the Council by setting a single maximum Union-wide mobile voice termination rate and a single maximum Union-wide fixed voice termination rate

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code[19], and in particular Article 75(1) thereof,

Whereas:

(1) Pursuant to Article 75(1) of Directive (EU) 2018/1972, the Commission is to establish, by means of a delegated act, a single maximum Union-wide voice termination rate for mobile services and a single maximum Union-wide voice termination rate for fixed services in order to reduce the regulatory burden in addressing the competition problems relating to wholesale voice termination consistently across the Union. The principles, criteria and parameters that the Commission should comply with when adopting the delegated act are set out in Annex III of that Directive.

(2) This Regulation is without prejudice to the powers of National Regulatory Authorities (NRAs) to define relevant markets appropriate to national circumstances, conduct the three criteria test and impose remedies other than price control in accordance with Article 64(3), 67 and 68 of the Code. Consequently, the non-price obligations that are currently imposed by NRAs to operators with significant market power in relation to fixed or mobile termination services are not to be affected by the entry into force of this Regulation, and will therefore remain valid until they are reviewed, in accordance with Union and national rules.

(3) Regulatory practice shows that the number on which mobile or fixed calls are terminated plays a crucial role in demand substitutability and competitive dynamics in voice termination, thus it is the main element giving rise to the termination monopoly that justifies the need for regulation. Therefore, the main criterion used for the definition of termination services should be the numbering range, that is to say whether the call is delivered to a mobile number, in case of mobile voice termination service, or to other types of numbers such as geographic numbers and certain non-geographic numbers, in case of fixed voice termination services.

(4) The termination services should include services provided through any technology used to terminate voice calls by the termination provider such as on a 2G, 3G, 4G or

19 OJ L 321, 17.12.2018, p. 36.

5G network and/or via WiFi, or any type of fixed network, regardless of the origin of the call.

(5) Any termination service, mobile or fixed, entails the terminating operator's network interconnecting with at least one network other than its own. Providers of voice termination services should therefore be considered those that have technical control and the legal right to use the called number and of the routing of the call to the recipient.

(6) The termination service should exclude the associated facilities that may be required by certain operators or in certain Member States for the provision of termination services. However, interconnection ports, which are currently regulated in many Member States, are essential elements of termination services for any operator as increased capacity for interconnection is needed with increasing traffic, and therefore should be included in the definition of the termination service. A provider of voice termination services should not levy any cost other than the relevant rates set by this Regulation for the full service of terminating a call to a user on its network.

(7) Voice termination services for calls to certain non-geographic numbers, such as those used for premium-rate services, toll-free services and shared-cost services (also known as "value added services"), do not behave as "traditional" termination services where there is a monopoly of the operators which terminate the call. Providers of such services have some bargaining power, and are able to negotiate the termination rate as part of the revenue sharing agreement. Therefore, termination providers face certain constraints when setting the charges for terminating calls to these non-geographic numbers, unlike in termination of calls to geographic or mobile numbers. Therefore, termination of calls to such numbers should be excluded from the scope of this Regulation. Numbering ranges specific for machine-to-machine (M2M) communications are not, in the majority of cases, used for providing interpersonal communications, being data traffic and not voice traffic, and thus they should not be included in the scope of this Regulation which is limited to voice communications.

(8) Voice termination services for calls to other types of non-geographic numbers, such as those used for fixed nomadic services and to access emergency services, exhibit the characteristics of the termination monopoly, and are provided over a fixed infrastructure. Therefore, they should fall within the scope of this Regulation and be treated as fixed voice termination services.

(9) Some voice services provided by operators cannot be classified as purely mobile or purely fixed services but are hybrid services. 'Home zone' services are an example of such hybrid services, whereby calls are typically delivered to a fixed number over a mobile network. In line with the definition of voice termination services whereby the called number is the determinant criterion, such hybrid services should be treated as mobile or fixed termination services depending on the number called.

(10) The regulated rates for voice termination services should apply to calls originated from and terminated to a number included in national numbering plans corresponding to E.164 country codes for geographic areas belonging to the territory of the Union (Union-numbers). Third country-numbers are all numbers other than Union-numbers. The inclusion of calls originating from third country-numbers and terminating to a Union-number, in the case where third country operators charge termination rates higher than the single maximum Union-wide voice termination rates or where such termination rates are not regulated according to cost-efficient principles that are equivalent to those set out in Article 75 and Annex III of the Code, would risk

undermining the objectives of this Regulation, in particular those of ensuring internal market integration.

(11) The combination of low regulated termination rates for calls originated from third country-numbers and terminated to Union-numbers and high and non-cost-efficient termination rates for calls to third country-numbers would likely result in higher termination rates for calls originating from Union-numbers and terminating to third country-numbers, which would have a negative impact on retail tariffs in the Union and on the cost structure of Union operators. The different degrees of exposure of Union operators to calls terminated by such third-country operators charging high and non-cost-efficient termination rates would lead to imbalances in the cost structures of Union operators due to factors out of the control of the operators themselves. This would likely prevent the emergence of pan-European retail offerings that include calls to certain third country-numbers, due to higher termination rates for calls to those countries, which could have a negative impact on consumers and especially businesses in the Union. Furthermore, it would distort competition as the asymmetrical impact of the exposure to high termination rates for calls terminated to third country-numbers would result in different competitive conditions faced by different Union operators, which would also ultimately distort investment ability and incentives across the Union (both investment in operators and by operators). All these effects would clearly run counter to the objectives of this Regulation, which are to promote the integration of the single market by removing distortions between operators due to termination rates charged well above cost.

(12) With the aim of applying the single maximum Union-wide voice termination rates in an open, transparent and non-discriminatory way, and to limit the exclusion of calls originated from third country-numbers to what is strictly necessary to ensure the achievement of the internal market objectives and to ensure proportionality, the rates set by this Regulation should apply to calls originated from third country-numbers and terminated to Union-numbers where the termination rates applied by third country providers of voice termination services to calls originated from Union-numbers are at a level equal or below the level of the maximum voice termination rates set by this Regulation. During the transitional period for fixed voice termination rates in 2021 and during the glide path for mobile voice termination rates (from 2021 to 2023*)*, the relevant maximum mobile termination rates that will trigger this mechanism will be those set out by paragraphs 2 to 5 of Article 4 of the Regulation. The relevant maximum fixed termination rates that will trigger this mechanism in 2021 will be those set out by Article 5(2) of the Delegated Regulation. Providers of voice termination services in the Union should apply such rates on the basis of rates applied or proposed by providers of voice termination services in third countries.

(13) Given that Union providers of voice termination services may not always be in the position to know the level of the termination rate applied by third-country operators, it should normally be for the latter to provide verifiable information proving the level of the termination rate offered. Where transit providers (or other intermediaries) resell termination services to Union operators, the termination rate applied or offered by those transit providers would be the relevant one for determining if it is equal or lower than the maximum voice termination rates set by this Regulation.

(14) When third countries' operators charge termination rates for calls originated from Union-numbers and terminated to third country-numbers which are higher than the Union-wide termination rates, the rates set by this Regulation should also apply for calls originated from third country-numbers and terminated to Union-numbers, where

the Commission determines, based on information provided to the Commission by such third countries, that the regulation of termination rates in these countries is based on principles equivalent to those set out in Article 75 of Directive (EU) 2018/1972 and Annex III thereto. The list of third countries which meet such requirements should be subsequently included in this Regulation and duly updated.

(15) As the origin of the call would define whether the Union-wide termination rates apply or not, it is essential for Union operators to be able to identify the country of origin of the caller. For this purpose, operators may rely on the country code within the calling line identification (CLI). In order to ensure a correct application of this Regulation, Union operators should receive a valid CLI assigned to every incoming call. Consequently, Union operators would not be bound to apply Union-wide termination rates to termination of calls if the CLI is missing, invalid or fraudulent.

(16) In order to estimate the efficient cost of terminating a voice call on a hypothetical mobile or fixed network in the Union in compliance with the principles set out in Article 75(1) of Directive (EU) 2018/1972 and Annex III thereto, two cost models, respectively for mobile and fixed termination, were developed taking into account costs in each Member State.

(17) Based on the feedback on costs in each Member State received through the consultation process, the cost models were finalised for both the mobile and fixed networks. Pursuant to Annex III to Directive (EU) 2018/1972, the cost models delivered rates on the basis of the recovery of costs incurred by an efficient operator. Therefore, the rates are based only on the incremental costs for providing the wholesale voice termination service, that is to say only those traffic-related costs which would be avoided in the absence of a wholesale voice termination service.

(18) The single maximum Union-wide mobile and fixed voice termination rates were established in reference to the efficient cost in the highest-cost country according to the cost models commissioned, thus ensuring the principle of cost recovery across the Union, and subsequently adding a minor safety margin to account for possible inaccuracies in the cost models.

(19) The single maximum Union-wide voice termination rates established by this Regulation should start applying two months after its entry into force, in order to ensure that operators have the necessary time to adjust their information, invoicing and accounting systems, and make the necessary changes to the interconnection agreements.

(20) Where current average voice termination rates in the Union are significantly higher than rates to be imposed in the future, that is to say the cost-efficient single maximum Union-wide voice termination rates set out in this Regulation, a glide path, which is a common regulatory practice, should be applied. In such cases, the glide path should provide an effective tool to smoothen the application of lower rates in compliance with the principle of proportionality.

(21) Considering the current average of mobile voice termination rates across Member States, a glide path should be devised to reach the single maximum Union-wide mobile voice termination rate. In order to strike a balance between a swift implementation and the need to avoid significant disruptions for operators, the glide path should start at a level close to the current average of mobile termination rates and decline yearly over a period of three years before reaching the single maximum Union-wide mobile voice termination rate in 2024.

(22) Therefore, this Regulation establishes a three-year glide path, reaching the cost-efficient single maximum Union-wide mobile voice termination rate in 2024. No transitional period should be necessary in case of providers in Member States which apply rates above the single maximum Union-wide mobile voice termination rates for 2021, as the glide path fulfils the objective of smoothening the impact of the implementation of the single maximum Union-wide mobile voice termination rate.

(23) In some Member States current regulated maximum mobile voice termination rates are below the mobile voice termination rates set for 2021, 2022 and 2023 as a result of the glide path, and close to the single maximum Union-wide mobile termination rate. In order to avoid potential increases in retail prices in those Member States, resulting from a temporary increase of regulated mobile termination rates, it should be possible to continue applying the current regulated mobile voice termination rates in those Member States until the year where the maximum mobile termination rate set by this Regulation for that year is at a level equal or below those Member States' current termination rates for that year.

(24) Since the difference between the average of current fixed termination rates and the single maximum Union-wide fixed voice termination rate set in this Regulation is smaller than that of mobile termination rates, a glide path in the case of fixed voice termination should not be necessary. However, granting a transitional period to certain Member States should be appropriate for ensuring a smooth transition to the single maximum Union-wide fixed voice termination rate and avoiding any unnecessary delays for its application.

(25) Based on the current levels of fixed termination rates in certain Member States and the level of the single maximum Union-wide fixed voice termination rate set in this Regulation, it is justified to grant a transitional period to some Member States. The transitional period should start from the date of application of this Regulation and should end on 31 December 2021. During the transitional period, specific rates, different from the single maximum Union-wide fixed voice termination rate, may apply in the Member States concerned.

(26) In those Member States where the current fixed voice termination rates are significantly higher than the single maximum Union-wide fixed voice termination rate, it is justified to grant a transitional period to allow for a gradual adjustment of those rates. In all Member States but two where the current fixed voice termination rates are above EUR 0.0875 cent (the single maximum Union-wide fixed voice termination rate plus 25%), the maximum fixed voice termination rate in 2021 should be equal to their current rates decreased by 20%. In Poland and Finland, which have not so far followed the principles set out in Commission Recommendation 2009/396/EC[20] and currently have very high fixed termination rates, a decrease of 20% would be an insufficient step towards the single maximum Union-wide fixed voice termination rate. Therefore, their rate for the transitional period should be that of the Member State with the highest rate during the transitional period, excluding those two Member States. For the remaining Member States where current fixed termination rates are below the single maximum Union-wide fixed voice termination rate, or where a 20% decrease would bring them at or below the single maximum Union-wide fixed voice termination rate, no transitional period should be established.

[20] Commission Recommendation 2009/396/EC of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (OJ L 124, 20.5.2009, p. 67).

(27) The Body of European Regulators for Electronic Communications was consulted in accordance with Article 75(1) of Directive (EU) 2018/1972 and delivered an opinion on 15 October 2020.

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation sets a single maximum Union-wide mobile voice termination rate and a single maximum Union-wide fixed voice termination rate to be charged by providers of wholesale voice termination services for the provision of mobile and fixed voice termination services.

2. This Regulation is without prejudice to the powers of national regulatory authorities under Article 64(3) and Articles 67 and 68 of Directive (EU) 2018/1972.

3. Articles 4 and 5 shall apply to calls originated from and terminated to Union-numbers.

4. Articles 4 and 5 shall also apply to calls originated from third country-numbers and terminated to Union-numbers where one of the two following conditions is met:

   (a) where a provider of voice termination services in a third country applies to calls originated from Union-numbers, mobile or fixed voice termination rates equal or lower than the maximum termination rates set out in Articles 4 or 5 respectively for mobile or fixed termination, for each year and each Member State, on the basis of rates applied or proposed by providers of voice termination services in third countries to providers of voice termination services in the Union; or

   (b) when:

      (a) the Commission determines that, on the basis of information provided by a third country, voice termination rates for calls originated from Union-numbers and terminated to numbers of that third country are regulated in accordance with principles equivalent to those set out in Article 75 of Directive (EU) 2018/1972 and Annex III thereto; and

      (b) that third country is listed in the Annex to this Regulation.

5. Articles 4 and 5 shall be understood as per minute charges (without VAT) and shall be charged on a per second basis.

Article 2

1. For the purposes of this Regulation, the following definitions apply:

   (a) ‘mobile voice termination service’ means the wholesale service required to terminate calls to mobile numbers that are publicly assigned numbering resources, namely numbers from national numbering plans, provided by operators with the ability to control termination and set the termination rates for calls to such numbers, where there is interconnection with at least one network, irrespective of the technology used, including interconnection ports;

   (b) ‘fixed voice termination service’ means the wholesale service required to terminate calls to geographic numbers and non-geographic numbers used for fixed nomadic services and to access emergency services, that are publicly assigned numbering resources, namely numbers from national numbering plans, provided by operators with the ability to control termination and set the termination rates for calls to such numbers, where there is interconnection with at least one network, irrespective of the technology used, including interconnection ports;

(c) ‘Union-number’ means a number from national numbering plans corresponding to E.164 country codes for geographic areas belonging to the territory of the Union.

Article 3

1. A provider of mobile or fixed voice termination services shall not charge any rate higher than the relevant maximum voice termination rate for the service of terminating a call to an end user on its network as provided in Articles 4 and 5.

2. Where voice termination rates are currently set in a currency other than the euro, the maximum mobile and fixed voice termination rates under Articles 4(1), 4(2), 4(4), 4(5) and 5(1) shall be converted into the national currency by applying the average of the reference exchange rates published on 1 January, 1 February and 1 March 2021 by the European Central Bank in the Official Journal of the European Union.

3. The maximum mobile and fixed voice termination rates denominated in currencies other than the euro shall be revised annually and updated by 1 January each year, using the most recent average of the reference exchange rates published on 1 September, 1 October and 1 November by the European Central Bank in the Official Journal of the European Union.

Article 4

1. The single maximum Union-wide mobile voice termination rate shall be EUR 0.2 cent per minute.

2. By derogation from paragraph 1, providers of mobile voice termination services may apply the following maximum mobile voice termination rates:

   (a) from [1st day of the third month after entry into force] to 31 December 2021, in Member States other than those mentioned in paragraph 3: EUR 0.7 cent per minute;

   (b) from 1 January 2022 to 31 December 2022, in Member States other than those mentioned in paragraph 4: EUR 0.55 cent per minute;

   (c) from 1 January 2023 to 31 December 2023, in Member States other than those mentioned in paragraph 5: EUR 0.4 cent per minute.

3. By derogation from paragraph 1, from [1st day of the third month after entry into force] to 31 December 2021, providers of mobile voice termination services may apply the following maximum mobile voice termination rates in the following Member States:

   (a) HRK 0.045 per minute in Croatia;

   (b) EUR 0.20 cent per minute in Cyprus;

   (c) DKK 0.0385 per minute in Denmark;

(d) EUR 0.622 cent per minute in Greece;

(e) HUF 1.71 per minute in Hungary;

(f) EUR 0.43 cent per minute in Ireland;

(g) EUR 0.67 cent per minute in Italy;

(h) EUR 0.4045 cent per minute in Malta;

(i) EUR 0.581 cent per minute in the Netherlands;

(j) EUR 0.36 cent per minute in Portugal;

(k) EUR 0.64 cent per minute in Spain;

(l) SEK 0.0216 per minute in Sweden.

4. By derogation from paragraph 1, from 1 January 2022 until 31 December 2022, providers of mobile voice termination services may apply the following maximum mobile voice termination rates in the following Member States:

(a) EUR 0.20 cent per minute in Cyprus;

(b) EUR 0.52 cent per minute in Denmark;

(c) EUR 0.47 cent per minute in Hungary;

(d) EUR 0.43 cent per minute in Ireland;

(e) EUR 0.40 cent per minute in Malta;

(f) EUR 0.36 cent per minute in Portugal;

(g) EUR 0.21 cent per minute in Sweden.

5. By derogation from paragraph 1, from 1 January 2023 until 31 December 2023, providers of mobile voice termination services may apply the following maximum mobile voice termination rates in the following Member States:

(a) EUR 0.20 cent per minute in Cyprus;

(b) EUR 0.36 cent per minute in Portugal;

(c) EUR 0.21 cent per minute in Sweden.

Article 5

1. The single maximum Union-wide fixed voice termination rate shall be EUR 0.07 cent per minute.

2. By derogation from paragraph 1, from [1st day of the third month after entry into force] to 31 December 2021, providers of fixed voice termination services may apply the following maximum rates for fixed voice termination services in the following Member States:

(a) EUR 0.089 cent per minute in Austria;

(b) EUR 0.093 cent per minute in Belgium;

(c) HRK 0.0057 per minute in Croatia;

(d) CZK 0.0264 per minute in Czechia;

(e) EUR 0.111 cent per minute in Finland;

(f) EUR 0.076 cent per minute in Latvia;

(g) EUR 0.072 cent per minute in Lithuania;

(h) EUR 0.110 cent per minute in Luxembourg;

(i) EUR 0.111 cent per minute in the Netherlands;

(j) PLN 0.0164 per minute in Poland;

(k) EUR 0.078 cent per minute in Romania;

(l) EUR 0.078 cent per minute in Slovakia.

Article 6

1. This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

2. It shall apply from [1st day of the third month after entry into force].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 18.12.2020

For the Commission
The President
Ursula VON DER LEYEN