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NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF ELECTRONIC COMMUNICATIONS, INCL. ROAMING

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020.³ Until that date, EU law in its entirety applies to and in the United Kingdom.⁴

During the transition period, the European Union and the United Kingdom will negotiate an agreement on a new partnership, providing notably for a free trade area. However, it is not certain whether such an agreement will be concluded and will enter into force at the end of the transition period. In any event, such an agreement would create a relationship which in terms of market access conditions will be very different from the United Kingdom’s participation in the internal market,⁵ in the EU Customs Union, and in the VAT and excise duty area.

Moreover, as of the end of the transition period the United Kingdom will be a third country as regards the implementation and application of EU law in the EU Member States

Therefore, all interested parties, and especially economic operators, are reminded of the legal situation as of the end of the transition period.

¹ A third country is a country not member of the EU.

² Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 29, 31.1.2020, p. 7 (“Withdrawal Agreement”).

³ The transition period may, before 1 July 2020, be extended once for up to 1 or 2 years (Article 132(1) of the Withdrawal Agreement). The UK government has so far ruled out such an extension.

⁴ Subject to certain exceptions provided for in Article 127 of the Withdrawal Agreement, none of which is relevant in the context of this notice.

⁵ In particular, a free trade agreement does not provide for internal market concepts (in the area of goods and services) such as mutual recognition, the “country of origin principle”, and harmonisation. Nor does a free trade agreement remove customs formalities and controls, including those concerning the origin of goods and their input, as well as prohibitions and restrictions for imports and exports.

Advice to stakeholders:

Stakeholders, providers of electronic communications networks and/or services, are in particular advised to assess the consequences of the end of the transition period in view of this notice.

Providers and customers of electronic communications services are advised to prepare for the end of the “roam like-at-home” provisions between the European Union and the United Kingdom as well as of the end of the price cap of regulated intra-EU communications.

Please note:

This notice does not address EU rules on

- security of network and information systems;
- electronic commerce and net neutrality;
- on geo-blocking;
- personal data protection; and
- value added tax (VAT) for the provision of services.

For these aspects, other notices are in preparation or have been published.⁶

After the end of the transition period, the EU rules in the field of electronic communications no longer apply to the United Kingdom.

This regulatory framework will include⁷:

- Directive (EU) 2018/1972, establishing the European Electronic Communications Code;⁸

⁶ https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/preparing-end-transition-period_en

⁷ Please note that this list is indicative of the provisions primarily covered by this Notice. It is intended for information purposes only and is therefore neither exhaustive nor binding.

⁸ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code, OJ L 321, 17.12.2018, p. 36.

This Directive repeals, with effect from 21 December 2020, the following four directives: Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), OJ L 108, 24.4.2002, p. 33; Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 (Authorisation Directive), OJ L 108, 24.2.2002, p. 21; Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 (Access Directive), OJ L 108, 24.2.2002, p.7; and

- the Directive on privacy and electronic communications (Directive 2002/58/EC);⁹
- the Radio Spectrum Decision (Decision No 676/2002/EC);¹⁰
- Regulation (EU) 2018/1971, establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office);¹¹
- the Regulation (EU) No 531/2012, on roaming on public mobile communications networks within the Union;¹²
- Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and retail charges for regulated intra-EU communications;¹³
- Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks;¹⁴
- as well as a number of Commission Recommendations on related matters, including:
 - Recommendation on relevant markets (concerning the identification of markets which are susceptible to regulatory intervention)¹⁵ and

Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 (Universal Service Directive), L 108, 24.2.2002, p. 51.

⁹ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), OJ L 201, 31.7.2002, p. 37.

¹⁰ Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision), OJ L 108, 24.4.2002, p. 1.

¹¹ Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009, OJ L 321, 17.12.2018, p. 1.

¹² Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union, OJ L 172, 30.6.2012, p. 10.

¹³ Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and retail charges for regulated intra-EU communications and amending Directive 2002/22/EC and Regulation (EU) No 531/2012, OJ L 310, 26.11.2015, p. 1.

¹⁴ Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks, OJ L 155, 23.5.2014, p. 1.

¹⁵ Commission Recommendation 2014/710/EU 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

- Recommendation on consistent non-discrimination obligations and costing methodologies.¹⁶

This has in particular the following consequences after the end of the transition period:

1. GENERAL AUTHORISATION

Providers established in at least one EU Member State enjoy the freedom to provide electronic communications networks and services in all other Member States without being required to have an establishment there. On the basis of EU rules, such providers can start providing electronic communications networks and services without the need of obtaining an explicit decision from an authority and are subject only to the "general authorisation" regime in each Member State where they provide networks or services. The general authorisation comprises rights and obligations for the provision of electronic communications networks and services, and Member States may only request providers to submit a notification, without any standstill obligation (Article 12 of Directive (EU) 2018/1972).

After the end of the transition period, providers of electronic communications networks and/or services established in the United Kingdom and not in the European Union will cease to benefit from the freedom to provide electronic communications networks and services and consequently from the general authorisation regime within the EU Member States. Hence, those providers will need an establishment in the European Union in order to benefit from the general authorisation regime within the EU Member States.

2. FIXED AND MOBILE TERMINATION RATES

After the end of the transition period, the EU's regulatory framework leading to low cost-oriented wholesale voice termination rates¹⁷ will no longer apply to service providers as regards calls between the European Union and the United Kingdom. The UK regulator will be free to set rates to be applied by providers of fixed and mobile termination in the United Kingdom, and may decide not to regulate wholesale termination rates.

3. RETAIL CHARGES FOR REGULATED INTRA-EU COMMUNICATIONS

After the end of the transition period, the retail price charged to consumers for regulated intra-EU communications¹⁸, which is capped at EUR 0,19 per minute for

framework for electronic communications networks and services (Recommendation on Relevant Markets), OJ L 295, 11.10.2014, p. 79.

¹⁶ Commission Recommendation of 11 September 2013 on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment, OJ L 251, 21.9.2013, p. 13.

¹⁷ Wholesale termination rates are the charges paid between operators to deliver the calls to their customers.

¹⁸ According to Art. 2(3) of Regulation (EU) 2015/2120, "regulated intra-EU communications" means any number-based interpersonal communications service originating in the Member State of the

calls and EUR 0,06 per SMS message communications, will no longer apply to EU and UK consumers as regards calls between the European Union and the United Kingdom and vice-versa. This may lead to increases in the retail price charged to consumers for calls from the European Union to the United Kingdom (and vice-versa).

4. ROAMING

After the end of the transition period, the United Kingdom becomes a third country for the purposes of EU rules on roaming on public mobile communications networks within the European Union (Regulation (EU) 531/2012).

Providers of roaming services to roaming customers (hereafter 'roaming providers') operating in the European Union:

- will no longer benefit, when requesting wholesale roaming access, from the obligation of mobile network operators operating in the United Kingdom to meet all reasonable requests for providing wholesale roaming access (Article 3 of Regulation (EU) 531/2012);
- will no longer benefit from the EU rules on maximum wholesale roaming charges that visited network operators operating in the United Kingdom may charge for the provision of wholesale roaming services within the European Union (Articles 7, 9, 12 of Regulation (EU) 531/2012).

Roaming customers of roaming providers operating in the European Union:

- will no longer benefit from the retail obligation of their roaming provider not to levy any surcharge in addition to the domestic retail price on them for the use in the United Kingdom of roaming services (calls made or received, SMS messages sent and data services), subject to fair use (Articles 6a and 6b of Regulation (EU) 531/2012, as well as the Commission Implementing Regulation (EU) 2016/2286¹⁹); but
- will continue to benefit from the transparency obligations laid down in Article 14 of Regulation (EU) 531/2012 (voice and SMS) and Article 15 of Regulation (EU) 531/2012 (data services) when travelling to the United Kingdom.

Roaming providers operating in the United Kingdom:

- will no longer benefit, when requesting wholesale roaming access, from the obligation of mobile network operators operating in the European Union to

consumer's domestic provider and terminating at any fixed or mobile number of the national numbering plan of another Member State, and which is charged wholly or partly based on actual consumption.

¹⁹ Commission Implementing Regulation (EU) 2016/2286 of 15 December 2016 laying down detailed rules on the application of fair use policy and on the methodology for assessing the sustainability of the abolition of retail roaming surcharges and on the application to be submitted by a roaming provider for the purposes of that assessment, OJ L L 344, 17.12.2016, p. 46.

meet all reasonable requests for providing wholesale roaming access (Article 3 of Regulation (EU) 531/2012);

- will no longer benefit from the EU rules on maximum wholesale roaming charges that visited network operators operating in the European Union may charge for the provision of wholesale roaming services within the European Union (Articles 7, 9, 12 of Regulation (EU) 531/2012).

Roaming customers of roaming providers operating in the United Kingdom:

- will no longer benefit from the EU rules on the retail obligation of their roaming provider not to levy any surcharge in addition to the domestic retail price on them for the use within the European Union of roaming services (calls made or received, SMS messages sent and data services), subject to fair use (Articles 6a and 6B of Regulation (EU) 531/2012); and
- will no longer benefit from the EU rules on the transparency obligations laid down in Article 14 of Regulation (EU) 531/2012 (voice and SMS) and Article 15 of Regulation (EU) 531/2012 (data services) when travelling to the European Union.

The website of the Commission on the Digital Single Market provides general information concerning Union legislation applicable to electronic communications (<https://ec.europa.eu/digital-single-market/en/telecoms>) and roaming (<https://ec.europa.eu/digital-single-market/en/roaming>). These pages will be updated with further information, where necessary.

European Commission
Directorate-General for Communications networks, Content and Technology