

Retail price caps for intra-EU communications (fixed and mobile calls and SMS)

The United Kingdom is due to leave the European Union on 29 March 2019. The UK has now reached an agreement in principle on the terms of the Withdrawal Agreement, which includes a time-limited Implementation Period. During the Implementation Period, EU law will continue to apply in the UK.

This note concerns amendments to Regulation (EU) 2015/2120 (the ‘Regulation’)¹ which introduce new EU rules on retail price caps for intra-EU communications (fixed and mobile calls and SMS). They are due to apply from 15 May 2019.

What are the price caps?

From 15 May 2019, consumers should be charged no more than €0.19 (+VAT)² per minute for calls made (including any connection charge) and €0.06 (+VAT) for SMS sent from the UK to any fixed or mobile number in an EU Member State. This tariff must be applied automatically to all consumers of fixed and mobile telecoms services unless they deliberately choose an alternative tariff, as provided for by Articles 5a(2) and (3) of the Regulation. Before consumers choose an alternative tariff, the service provider must inform them of the advantages which would thereby be lost.

Who do the price caps apply to?

The price caps apply to all providers of ‘regulated intra-EU communications’ and apply in relation to ‘consumers’. Regulated intra-EU communications is defined in the Regulation, as amended. The term ‘consumer’ is defined for these purposes in Article 2 of Directive 2002/21/EC (the Framework Directive), which is incorporated into the Regulation by virtue of Article 2 of the Regulation. Article 2(i) of the Framework Directive states that “‘consumer’ means any natural person who uses or requests a publicly available electronic communications service for purposes which are outside his or her trade, business or profession”.

How should the euro price caps be converted to sterling?

Article 5a(5) of the Regulation sets out that, when converting maximum prices into currencies other than the Euro, “the initial limits shall be determined in those currencies by applying the average of the reference exchange rates published on 15 January, 15 February and 15 March 2019 by the European Central Bank in the Official Journal of the European Union.”

These limits shall then be revised annually using the average of the reference exchange rates published on 15 January, 15 February and 15 March of that year, with the revised maximum price applying from 15 May of that year.

¹ The draft amendments can be found in Article 50 starting on page 118 at:

<http://www.europarl.europa.eu/sides/getDoc.do?type=AMD&format=PDF&reference=A8-0305/2017&secondRef=002-002&language=EN>. A final version of the amendments is expected to be published shortly. Please ensure that you refer to the final published version of the text.

² The maximum prices in the Regulation are set in Euro and are exclusive of any value added tax applied. See below for how to convert these maximum prices from Euro into other currencies.

What if applying the price caps will have a significant impact on a provider's business?

Where a provider establishes that, due to specific and exceptional circumstances that distinguish it from most other providers in the European Union, complying with the price caps will have a significant impact on its ability to sustain its existing prices for domestic communications services, Article 5a(6) of the Regulation allows it to apply for a temporary derogation from these requirements.

BEREC expects to publish guidelines on the criteria national regulatory authorities should take into account when assessing derogation requests in March 2019. Once this guidance is published, if you wish to discuss or apply for derogation, please email IntraEUCommunications@ofcom.org.uk.