



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Derogation from Intra-EU Communications Regulation

Information for operators applying for
authorisation for a derogation from the price
regulation of intra-EU communications
services

Information Notice

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Commission for Communications Regulation

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Background

1. From 15 May 2019, any retail price (excluding VAT) charged to consumers for regulated intra-EU communications shall not exceed EUR 0.19 per minute for calls and EUR 0.06 per SMS message (the “intra-EU price caps”)¹. “Regulated intra-EU communications” means any number-based interpersonal communications service originating in the European Union Member State of a 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. Where a provider of regulated intra-EU communications establishes that, due to specific and exceptional circumstances distinguishing it from most other European Union providers, the application of the intra-EU price caps would have significant impact on that provider’s capacity to sustain its existing prices for domestic communications, a national regulatory authority may, upon that provider’s request, grant a derogation from the intra-EU price caps only to the extent necessary and for a renewable period of one year.
2. ComReg, as the national regulatory authority in Ireland, has the responsibility for assessing and making decisions on applications from Irish fixed and mobile network operators for a derogation from the intra-EU price caps². The purpose of this document is to outline the application process to be followed by those operators seeking such a derogation.
3. The TSM Regulation sets out that an intra-EU price cap derogation may be granted following an assessment of the sustainability of the domestic charging model based on relevant objective factors specific to the provider of regulated intra-EU communications, as well as the level of domestic prices and revenue. Where the applicant operator has discharged the applicable evidentiary burden, the national regulatory authority (i.e., ComReg) shall determine the maximum price level in excess of one or both of the intra-EU price caps which would be indispensable in order to ensure the sustainability of the applicant’s domestic charging model. Additional guidance is provided in the Body of European Regulators for Electronic Communications/BEREC Guidelines on Intra-EU communications³. The BEREC Guidelines can be accessed [here](#). ComReg has to take the BEREC Guidelines into

¹ As per Article 5a of Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 (the “TSM-Regulation”) as amended by Article 50 of the Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018 (the “BEREC Regulation”). For the full text of Article 5a of the TSM Regulation, please refer to Article 50 of the BEREC Regulation: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1971&from=EN>

² As per paragraph 6 of Article 5a of the TSM-Regulation.

³ BoR (19) 35, 7 March 2019 (the “BEREC Guidelines”), see in particular section F, Sustainability.

utmost account when implementing the provisions of Article 5a of the TSM Regulation.

4. ComReg proposes to apply the two step assessment procedure set out in Section F of the BEREC Guidelines in assessing whether to grant a derogation from the intra-EU price caps. In brief, and as set out in more detail in the BEREC Guidelines⁴, this involves first checking through a benchmark analysis whether the operator is significantly more affected than most other providers in the European Union. If this is the case, ComReg will then assess the sustainability of the applicant's domestic pricing model in accordance with the principles in the BEREC Guidelines⁵. ComReg advises operators to review the BEREC Guidelines in detail before submitting an application for a derogation from the intra-EU price caps.
5. As highlighted at paragraph 56 of the BEREC Guidelines, operators who are granted a derogation should comply with rules in Ireland regarding transparency or changes in terms and conditions⁶.

Form of Application

6. Applications should be made in the form recommended by the BEREC Guidelines. ComReg would like to bring operators' attention to the template in spreadsheet form provided at [Annex 2](#) of the BEREC Guidelines and to paragraphs 48 to 52 of the BEREC Guidelines regarding the content of the application. All applications should be accompanied by a completed version of the spreadsheet at Annex 2 of the BEREC Guidelines.
7. All applications should be supported by a declaration from an accountant as outlined in paragraph 50 of the BEREC Guidelines. This declaration should confirm that the data supplied is presented correctly and that a consistent and correct methodology for projections has been implemented.
8. ComReg will take utmost account of the BEREC Guidelines in assessing applications.

Timeline for considering application

9. For ComReg to be able to grant derogation requests applicable from 15 May 2019 when the provisions of the TSM Regulation regarding the intra-EU price caps take effect, applicant operators should inform ComReg in advance about their intention

⁴ See in particular Section F, paragraph 34 - 42 of the BEREC Guidelines.

⁵ See in particular Section F, paragraph 43 - 47 of the BEREC Guidelines.

⁶ Including those set out in the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011.

to apply for a derogation and should submit their complete application with all the necessary information and data at least one month before 15 May 2019⁷. ComReg will not consider an application to have been received until all of the information outlined in the BEREC Guidelines has been supplied⁸.

How to apply

10. All applications should be clearly marked “Intra-EU Price Cap Derogation Application” and emailed to: wholesalepricing@comreg.ie .
11. ComReg intends to publish an information notice following consideration of each application.

⁷ The derogation would be granted for a period of one year. For the derogation to be renewed after that period, the operator must update all the necessary information and provide this to ComReg for consideration at least one month in advance of the expiration of the existing derogation.

⁸ ComReg will observe the procedures set out in paragraph 55 of the BEREC Guidelines in this regard.