

Proposal for a Decision of the European Parliament and of the Council on a regulatory framework for radio spectrum policy in the European Community

(2000/C 365 E/20)

(Text with EEA relevance)

COM(2000) 407 final — 2000/0187(COD)

(Submitted by the Commission on 29 August 2000)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

(1) On 10 November 1999 the Commission presented a communication ⁽¹⁾ to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions proposing the next steps in radio spectrum policy on the basis of the results of the Public Consultation on the Green Paper on radio spectrum policy in the context of European Community policies such as telecommunications, broadcasting, transport and R & D ⁽²⁾. This communication received the support of the European Parliament in a resolution of 18 May 2000 ⁽³⁾. It underlined the need for action at Community level to achieve a harmonised and balanced approach on the use of radio spectrum in the Community in order to fulfil internal market principles and to protect Community interests at international level.

(2) Where necessary, policy principles on the use of radio spectrum need to be defined at Community level with a view to meeting Community policy objectives, in particular in the areas of communications, broadcasting, transport, research which all require, to various extents, the use of radio spectrum, while maintaining a high standard of citizen's health. On the basis of these principles, the use of radio spectrum should be coordinated and harmonised at Community level, where necessary to fulfill these Community objectives. Community coordination and harmonisation may also help achieving

harmonisation and coordination of the use of the spectrum at global level in certain cases. At the same time, appropriate technical support can be provided at national level.

(3) Spectrum policy cannot be based only on technical parameters but also needs to take into account economic, political, cultural, health and social considerations. Moreover, the ever increasing scarcity of available radio spectrum may increase the sources of conflicts between the various groups of radio spectrum users in sectors such as communications, broadcasting, transport, law enforcement, military and the scientific community. Therefore, spectrum policy should take into account all sectors and balance the respective needs. This Decision should not affect the right of Member States to impose restrictions necessary for public order and public security purposes.

(4) In order to define general policy objectives regarding the use of spectrum, an appropriate consultative body should be created which will gather together, under the chairmanship of the Member State holding the Presidency of the Council, senior Member States representatives responsible for the various sectors using or affected by the use of radio spectrum, such as communications, broadcasting, audio-visual, transport, research and development as well as of security policy, military defence and police sectors, which may be indirectly affected. This group should provide guidance to the Commission, both on its own initiative and at the request of the Commission, on the need for harmonisation of the use of radio spectrum in the general context of Community policy and on regulatory and other issues related to the use of radio spectrum which impact on Community policies, including, for example, methods for granting rights to use spectrum, information availability, availability of spectrum, refarming, relocation, valuation and efficient use of radio spectrum as well as protection of human health. For that purpose, each national delegation should have a coordinated view of all policy aspects affecting spectrum use in its Member State in relation with the issues to be discussed in the group.

(5) The group will take into account the views of the industry and of all users involved, both commercial and non-commercial, as well as of other interested parties on technological, market and regulatory developments which may affect the use of radio spectrum. Spectrum users should be free to provide all input they believe is necessary. The group may decide to hear representatives of the spectrum users communities at group meetings where necessary to illustrate the situation in a particular sector.

⁽¹⁾ COM(1999) 538.

⁽²⁾ COM(1998) 596.

⁽³⁾ A5-0122/2000.

- (6) The Commission should report on a regular basis to the European Parliament and the Council on the results achieved under this Decision, on policy objectives for radio spectrum in the Community as well as on planned future actions. This will allow for the provision of the appropriate political support for the policy objectives.
- (7) Radio spectrum technical management includes the harmonisation and allocation of radio spectrum. Such harmonisation should reflect the requirements of general policy principles identified at Community level. Coordinated introduction in the Community of systems using radio spectrum is dependent on the various national approaches to assignment and licensing including with regard to spectrum pricing and license fees. These issues should therefore be discussed and where appropriate be harmonised at Community level.
- (8) The Community approach should also benefit from cooperation with radio spectrum experts from national authorities responsible for radio spectrum management. Building on the experience of mandating procedures gained in specific sectors, for example as a result of the application of Decision No 710/97/EC of the European Parliament and of the Council of 24 March 1997 on a coordinated authorisation approach in the field of satellite personal-communication services in the Community⁽¹⁾ (the S-PCS Decision) as amended by Decision No 1215/2000/EC⁽²⁾ and Decision No 128/1999/EC of the European Parliament and of the Council of 14 December 1998 on the coordinated introduction of a third generation mobile and wireless communications system (UMTS) in the Community⁽³⁾ (the UMTS Decision), a permanent, stable and uniform framework needs to be created at Community level to ensure harmonised availability of radio spectrum use and to provide adequate legal certainty. Harmonisation measures should be adopted as a result of mandates to national experts acting in appropriate spectrum management bodies including the European Conference of Postal and Telecommunications administration (CEPT). Where necessary, the Commission should be able to make the results of such mandates compulsory for Member States, and where the results of such mandates are not acceptable, to take appropriate alternative action. This will in particular provide for the harmonisation of frequency spectrum necessary for the implementation of Directive .../.../EC of the European Parliament and Council Directive [on the authorisation of electronic communications networks and services].
- (9) Appropriate information on present and future planning, allocation and assignment of radio spectrum, as well as conditions for access to and use of the whole radio spectrum are essential elements for investments and policy making. So are technological developments which will give rise to new spectrum allocation and management techniques and frequency assignment methods. Development of long-term strategic aspects require proper understanding of the implications of how technology evolves. Such information should therefore be made accessible in the Community, without prejudice to confidential business and personal information protection under Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector⁽⁴⁾. The implementation of a cross-sectoral spectrum policy makes the availability of information on the whole radio spectrum necessary. In view of the general purpose of harmonising spectrum use in the Community and in Europe, such information needs to be aggregated at a European level in a user-friendly manner.
- (10) It is therefore necessary to complement existing Community and international requirements for publication of information on use of radio spectrum. At international level, the Reference Paper on Regulatory Principles negotiated in the context of the World Trade Organisation by the Group on Basic Telecommunications also requires that the existing state of allocated frequency bands be made publicly available. Commission Directive 96/2/EC of 16 January 1996 amending Directive 90/388/EEC with regard to mobile and personal communications⁽⁵⁾ ('the Mobile Directive') requires Member States to publish every year or make available on request the allocation scheme of frequencies, including plans for future extension of such frequencies, but only covers mobile and personal communications services. Moreover, Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity⁽⁶⁾, as well as Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services⁽⁷⁾, as amended by Directive 98/48/EC⁽⁸⁾, require Member States to notify to the Commission the interfaces which they have regulated so as to assess their compatibility with Community law.

⁽¹⁾ OJ L 105, 23.4.1997, p. 4.

⁽²⁾ OJ L 139, 10.6.2000, p. 1.

⁽³⁾ OJ L 17, 22.1.1999, p. 1.

⁽⁴⁾ OJ L 24, 30.1.1998, p. 1.

⁽⁵⁾ OJ L 20, 26.1.1996, p. 59.

⁽⁶⁾ OJ L 91, 7.4.1999, p. 10.

⁽⁷⁾ OJ L 204, 21.7.1998, p. 37.

⁽⁸⁾ OJ L 217, 5.8.1998, p. 18.

- (11) The Mobile Directive was at the origin of the adoption of a first set of measures by CEPT such as European Radiocommunications Committee Decision (ERC/DEC/(97)01) ⁽¹⁾ on the publication of national tables of radio spectrum allocations. It is necessary to ensure that CEPT solutions reflect the needs of Community policy and are given the appropriate legal basis so as to be implemented in the Community. For that purpose, specific measures have to be adopted in the Community both on procedure and substance.
- (12) Community undertakings should obtain fair and non-discriminatory treatment on access to spectrum in third countries. As access to radio spectrum is a key factor for business development and public interest activities, it is also necessary to ensure that Community requirements for radio spectrum are reflected in international planning.
- (13) Implementation of Community policies may require coordination of radio spectrum use, in particular the provision of communications services including Community-wide roaming facilities. Moreover, certain types of spectrum use entail a geographical coverage which goes beyond the borders of a Member State and allow for transborder services without requiring the movement of persons, such as satellite communications services. It is therefore necessary that the Community be adequately represented in the activities of all relevant international organisations and conferences related to radio spectrum management matters, such as within the International Telecommunications Union and its World Radiocommunications Conferences ⁽²⁾. In international negotiations, Member States and the Community should develop a common action and closely cooperate during the whole negotiations process so as to safeguard the unity of the international representation of the Community. As a consequence, Member States should support the request by the Community in view of involvement in such negotiations, based in particular on the procedures which had been agreed in the Council conclusions of 3 February 1992 for the World Administrative Radio Conference and as confirmed by the Council conclusions of 22 September 1997 and 2 May 2000. For such international negotiations, the Commission sets out the objectives to be achieved in the context of Community policies, in view of obtaining endorsement by Council on the positions to be taken by Member States at international level. Member States accompany any act of acceptance of any agreement or regulation within international fora in charge of or concerned with spectrum management by a joint declaration stating that they will apply such agreement or regulation in accordance with their obligations under the Treaty.
- (14) The inherent international nature of spectrum issues may require the adoption of a number of agreements with third countries which also affect frequency bands usage
- and sharing plans, in view in particular of trade and market access, including in the World Trade Organisation framework, free circulation and use of equipment, communications systems of regional or global coverage such as satellites, safety and distress operations, transportation systems, broadcasting technologies, and research applications such as radio-astronomy and earth observation.
- (15) It is necessary, due to the potential commercial sensitivity of information which may be obtained by national authorities in the course of their action relating to spectrum policy and management, to establish common principles applicable to these national regulatory authorities in the field of confidentiality.
- (16) Taking into account international trade obligations of the Community and its Member States, Member States should implement this common framework for spectrum policy, in particular through their national authorities and provide all information required to the Commission to assess the proper implementation throughout the Community.
- (17) The existing UMTS and S-PCS Decisions should remain in force until they reach their date of expiry as they provide for a legal basis for ongoing harmonisation measures and specific solutions for UMTS and S-PCS.
- (18) In accordance with Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽³⁾, measures for the implementation of this Decision should be adopted by use of the advisory procedure provided for in Article 3 of that Decision or the regulatory procedure provided for in Article 5 of that Decision, as appropriate,

HAVE ADOPTED THIS DECISION:

Article 1

Aim

The aim of this Decision is to:

- (a) create a policy framework to address the strategic planning and harmonisation of the use of radio spectrum in the Community taking into consideration in particular economic, health, public policy, cultural, scientific, social and technical aspects of Community policies as well as the various interests of radio spectrum users communities with the aim of optimising the use of spectrum and of avoiding harmful interference;

⁽¹⁾ www.ero.dk.

⁽²⁾ The Commission reported on the Community issues at stake in WRC in COM(1997) 304, COM(1998) 298 and COM(2000) 86.

⁽³⁾ OJ L 184, 17.7.1999, p. 23.

- (b) establish a procedural framework to ensure the effective implementation of radio spectrum policy in the Community, and in particular establish a general methodology for harmonisation of the use of radio spectrum;
- (c) ensure the coordinated and timely provision of information on radio spectrum use and availability in the Community;
- (d) safeguard Community interests in international negotiations where radio spectrum use affects Community policies.

This Decision is without prejudice to the specific rules adopted by Member States or the Community governing the content of audio-visual programmes intended for the general public, to the provisions of Directive 1999/5/EC and to the right of Member States to organise their radio spectrum for public order and public security purposes.

Article 2

Definitions

For the purposes of this Decision:

- (a) 'Radio spectrum' includes at least radio waves in frequencies between 9 KHz and 3 000 GHz; radio waves are electromagnetic waves propagated in space without artificial guide;
- (b) 'Allocation of a radio frequency band' means the entry of a radio frequency band in a table of radio frequency allocations for the purpose of its use by one or more types of services under specified conditions;
- (c) 'Assignment of a radio frequency' means the authorisation given by an authority to use a radio frequency under specified conditions.

Article 3

Senior Official Radio Spectrum Policy Group

With a view to the strategic planning and harmonisation of use of radio spectrum in the Community, the Commission shall be assisted by a consultative group to be called the Senior Official Radio Spectrum Policy Group.

The Group shall be composed of senior representatives from the Member States and a representative of the Commission, and shall meet at least twice a year under the chairmanship of the representative of the Member State holding the Council Presidency. The Group's secretariat shall be provided by the Commission.

The Group shall consult, as it may deem appropriate, representatives from the various sectors of activities and citizen

representatives affected by or requiring the use of radio spectrum in the Community and in the rest of Europe.

Article 4

Function of the Senior Official Radio Spectrum Policy Group

The Senior Official Radio Spectrum Policy Group shall contribute to the formulation, preparation and implementation of a radio spectrum policy by delivering opinions to the Commission either at the Commission's request or on its own initiative, and shall contribute to the preparation of the Commission's report referred to in Article 11.

The Group shall in particular:

- (a) monitor the evolution of the use of and access to radio spectrum in the Community as well as at national, regional, and global levels;
- (b) review current needs and anticipate future needs for radio spectrum for commercial as well as non-commercial applications in the Community, based in particular on strategic, economic, technological, political, health, social and cultural aspects of radio spectrum use, in view of the fulfilment of Community policy objectives; advise the Commission on strategic planning of radio spectrum use, and where necessary, balance the various requirements for radio spectrum of different users;
- (c) advise the Commission on regulatory, international, technical, economic and political developments affecting the use of spectrum, as well as on the need for harmonisation measures at Community level for radio spectrum use to implement Community policies;
- (d) assess the need for European common proposals to be developed in view of international negotiations;
- (e) assist in the preparation of the Commission annual report on the developments impacting on existing and future use of radio spectrum in the Community;
- (f) encourage the exchange of information among Member States on the evolution of the use of radio spectrum in the Community.

Article 5

Committee

1. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by the representative of the Commission ('the Radio Spectrum Committee').

2. Where reference is made to this paragraph, the advisory procedure laid down in Article 3 of Decision 1999/468/EC shall apply, in compliance with Article 7 and Article 8 thereof.

3. Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7 and Article 8 thereof.

The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.

Article 6

Harmonisation measures

1. Where appropriate, and taking into account where possible the advice of the Senior Official Radio Spectrum Policy Group, the Commission shall propose measures to harmonise the use of radio spectrum, assignment methods, conditions for such use, as well as the availability of information related to the use of radio spectrum.

2. For these purposes, the Commission shall give mandates to the CEPT, setting out the tasks to be performed and the timetable therefor. The Commission shall act in accordance with the procedure referred to in Article 5(2).

3. On the basis of the work completed pursuant to paragraph 2, the Commission shall decide whether the results of the mandate are acceptable and, if so, may decide to make such results mandatory for the Member States, which shall implement them in a deadline to be determined. These Decisions shall be published in the *Official Journal of the European Communities*. For the purpose of this paragraph, the Commission shall act in accordance with the procedure referred to in Article 5(3).

4. Notwithstanding paragraph 3, if the Commission or any Member State considers that the work done on the basis of a mandate granted pursuant to paragraph 2 is not progressing satisfactorily having regard to the set timetable or if the results of the mandate are not acceptable, the Commission may adopt measures to achieve the objectives of the mandate, acting in accordance with the procedure referred to in Article 5(3).

Article 7

Availability of information on spectrum allocation and assignment

Member States shall publish without delay the information as defined in the Annex and shall keep this information up to date.

Moreover, Member States shall take measures to develop an appropriate data base in order to make such information available to the public in a harmonised way.

Article 8

Relations with third countries and international organisations

1. The Commission shall monitor developments regarding radio spectrum in third countries and in international organisations, which may have implications for the implementation of this Decision.

2. The Member States shall inform the Commission of any difficulties created, *de jure* or *de facto*, by third countries or international organisations for the implementation of this Decision.

3. The Commission shall report regularly on the results of the application of paragraphs 1 and 2 to the European Parliament and the Council and may propose measures with the aim of securing the implementation of the principles and objectives of this Decision, where appropriate. Whenever necessary, common positions shall be agreed to ensure Community coordination among Member States.

4. Measures taken pursuant to this Article shall be without prejudice to the Community's and Member States' rights and obligations under relevant international agreements.

Article 9

Notification

Member States shall give the Commission such information as it may require for the purpose of verifying the implementation of this Decision. In particular, Member States shall immediately inform the Commission about the implementation of the results of the mandates pursuant to Article 6(3).

Article 10

Confidentiality

1. Member States shall not disclose information covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

2. Paragraph 1 shall be without prejudice to the right of national authorities to undertake disclosure where it is essential for the purposes of fulfilling their duties, in which case such disclosure shall be proportionate and shall have regard to the legitimate interests of undertakings in the protection of their business secrets.

3. Paragraph 1 shall not preclude publication of information on conditions linked to the granting of rights to use spectrum which does not include information of a confidential nature.

*Article 11***Report**

The Commission shall report on an annual basis to the European Parliament and the Council on the activities developed and the measures adopted pursuant to this Decision, on the results of the work done by the Senior Official Radio Spectrum Policy Group as well as on future actions envisaged pursuant to this Decision.

*Article 12***Implementation**

Member States shall take all measures necessary, by law or administrative action, for the implementation of this Decision and all resulting measures.

*Article 13***Entry into Force**

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

*Article 14***Addressees**

This Decision is addressed to the Member States.

ANNEX

Pursuant to Article 7, and without prejudice to notification obligations under Directives 1999/5/EC and 98/34/EC, the following information shall be published:

1. Information regarding frequency allocation and assignment includes the following:
 - existing allocations and assignments of radio spectrum as well as conditions for the use of radio spectrum, including where practicable, operating power, emission and any other technical constraints;
 - plans for changes to existing allocations for the next two years at least, including relocation plans and review date of allocation;
 - locations and geographical coverage linked to allocation plans;
 - service actually operated, if different from allocated, and effective use of spectrum;
 - reserved bands for new services.
 2. Without prejudice to the provisions of specific legislation relating to communications networks and services, publication shall include procedures for granting rights to use spectrum, and planned changes to spectrum use conditions. These shall include all types of obligations, charges and financial costs related to the use of radio spectrum, including administrative charges, usage fees and procedures for assignment of spectrum (including auctions).
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