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(Acts whose publication is obligatory)

**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)

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 ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾.

Whereas:

- (1) On 10 November 1999 the Commission presented a communication 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 research and development (R & D). This Communication was welcomed by the European Parliament in a Resolution of 18 May 2000 ⁽⁴⁾. It should be emphasised that a certain degree of further harmonisation of Community policy on the radio spectrum is desirable for services and applications, in particular for services and applications with Community or European coverage, and that it is necessary to ensure that the Member States make applicable in the required manner certain decisions of the European Conference of Postal and Telecommunications Administrations (CEPT).
- (2) A policy and legal framework therefore needs to be created in the Community in order to ensure coordination of policy approaches and, where appropriate, harmonised conditions with regard to the availability and efficient use of radio spectrum necessary for the establishment and functioning of the internal market in Community policy areas, such as electronic

communications, transport and R & D. The policy approach with regard to the use of radio spectrum should be coordinated and, where appropriate, harmonised at Community level, in order to fulfil Community policy objectives efficiently. Community coordination and harmonisation may also help achieving harmonisation and coordination of the use of the radio spectrum at global level in certain cases. At the same time, appropriate technical support can be provided at national level.

- (3) Radio spectrum policy in the Community should contribute to freedom of expression, including freedom of opinion and freedom to receive and disseminate information and ideas, irrespective of borders, as well as freedom and plurality of the media.
- (4) This Decision is based on the principle that, where the European Parliament and the Council have agreed on a Community policy which depends on radio spectrum, committee procedures should be used for the adoption of accompanying technical implementing measures. Technical implementing measures should specifically address harmonised conditions with regard to the availability and efficient use of radio spectrum, as well as the availability of information related to the use of radio spectrum. The measures necessary for the implementation of this Decision should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽⁵⁾.
- (5) Any new Community policy initiative depending on radio spectrum should be agreed by the European Parliament and the Council as appropriate, on the basis of a proposal from the Commission. Without prejudice to the right of initiative of the Commission, this proposal should include, *inter alia*, information on the impact of the envisaged policy on existing spectrum user communities as well as indications regarding any general radio frequency reallocation that this new policy would require.
- (6) For the development and adoption of technical implementing measures and with a view to contributing to the formulation, preparation and implementation of

⁽¹⁾ OJ C 365 E, 19.12.2000, p. 256 and OJ C 25 E, 29.1.2002, p. 468.

⁽²⁾ OJ C 123, 25.4.2001, p. 61.

⁽³⁾ Opinion of the European Parliament of 5 July 2001 (not yet published in the Official Journal), Council Common Position of 16 October 2001 (OJ C 9, 11.1.2002, p. 7) and Decision of the European Parliament of 12 December 2001 (not yet published in the Official Journal). Council Decision of 14 February 2002.

⁽⁴⁾ OJ C 59, 23.2.2001, p. 245.

⁽⁵⁾ OJ L 184, 17.7.1999, p. 23.

Community radio spectrum policy, the Commission should be assisted by a committee, to be called the Radio Spectrum Committee, composed of representatives of the Member States and chaired by a representative of the Commission. The Committee should consider proposals for technical implementing measures related to radio spectrum. These may be drafted on the basis of discussions in the Committee and may in specific cases require technical preparatory work by national authorities responsible for radio spectrum management. Where committee procedures are used for the adoption of technical implementing measures, the Committee should also 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. Radio spectrum users should be free to provide all input they believe is necessary. The Committee may decide to hear representatives of radio spectrum user communities at its meetings where necessary to illustrate the situation in a particular sector.

- (7) Where it is necessary to adopt harmonisation measures for the implementation of Community policies which go beyond technical implementing measures, the Commission may submit to the European Parliament and to the Council a proposal on the basis of the Treaty.
- (8) Radio 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 demand for the finite supply of available radio spectrum will lead to conflicting pressures to accommodate the various groups of radio spectrum users in sectors such as telecommunications, broadcasting, transport, law enforcement, military and the scientific community. Therefore, radio spectrum policy should take into account all sectors and balance the respective needs.
- (9) This Decision should not affect the right of Member States to impose restrictions necessary for public order and public security purposes and defence. Where a technical implementing measure would affect *inter alia* radio frequency bands used by a Member State exclusively and directly for its public security and defence purposes, the Commission may, if the Member State requests it on the basis of justified reasons, agree to transitional periods and/or sharing mechanisms, in order to facilitate the full implementation of that measure. In this regard, Member States may also notify the Commission of their national radio frequency bands used exclusively and directly to pursue public security and defence purposes.
- (10) In order to take into account the views of Member States, Community institutions, 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, the Commission may organise consultations outside the framework of this Decision.
- (11) 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. However, radio spectrum technical management does not cover assignment and licensing procedures, nor the decision whether to use competitive selection procedures for the assignment of radio frequencies.
- (12) With a view to the adoption of technical implementing measures addressing the harmonisation of radio frequency allocation and of information availability, the Committee should cooperate 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⁾ 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 ⁽²⁾, technical implementing measures should be adopted as a result of mandates to the CEPT. Where it is necessary to adopt harmonised measures for the implementation of Community policies which do not fall within the remit of CEPT, the Commission could adopt implementation measures with the assistance of the Radio Spectrum Committee.
- (13) The CEPT comprises 44 European countries. It drafts technical harmonisation measures with the objective of harmonising the use of radio spectrum beyond the Community borders, which is particularly important for those Member States where the use of radio spectrum may be affected by that of the non-EU members of CEPT. Decisions and measures taken in accordance with this Decision should take account of the specific situation of Member States with external frontiers. Where necessary, the Commission should be able to make the results of mandates issued to CEPT compulsory for Member States, and where the results of such mandates are not available or deemed not

⁽¹⁾ OJ L 105, 23.4.1997, p. 4. Decision as amended by Decision No 1215/2000/EC (OJ L 139, 10.6.2000, p. 1).

⁽²⁾ OJ L 17, 22.1.1999, p. 1.

acceptable, to take appropriate alternative action. This will in particular provide for the harmonisation of use of radio frequencies across the Community, in line with 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) ⁽¹⁾ and taking into account the provisions of Directive 2002/20/EC of the European Parliament and the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) ⁽²⁾.

- (14) The coordinated and timely provision to the public of appropriate information concerning the allocation, availability and use of radio spectrum in the Community is an essential element for investments and policy making. So are technological developments which will give rise to new radio spectrum allocation and management techniques and radio 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 ⁽³⁾. The implementation of a cross-sectoral radio spectrum policy makes the availability of information on the whole radio spectrum necessary. In view of the general purpose of harmonising radio spectrum use in the Community and elsewhere in Europe, the availability of such information needs to be harmonised at European level in a user-friendly manner.
- (15) 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 radio 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 ⁽⁴⁾ required Member States to publish every year or make available on request the allocation scheme of radio frequencies, including plans for future extension of such frequencies, but covered only 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 ⁽⁵⁾, 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 ⁽⁶⁾, require Member States to notify the Commission of the interfaces which they have regulated so as to assess their compatibility with Community law.

- (16) Directive 96/2/EC 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) 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.
- (17) Community undertakings should obtain fair and non-discriminatory treatment on access to radio 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.
- (18) Implementation of Community policies may require coordination of radio spectrum use, in particular with regard to the provision of communications services including Community-wide roaming facilities. Moreover, certain types of radio 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. The Community should therefore be adequately represented in the activities of all relevant international organisations and conferences related to radio spectrum management matters, such as within the International Telecommunication Union (ITU) and its World Radiocommunications Conferences.
- (19) The existing preparation and negotiation mechanisms for ITU World Radiocommunication Conferences have generated excellent results due to willing cooperation within the CEPT, and the Community's interests have

⁽¹⁾ See page 33 of this Official Journal.

⁽²⁾ See page 21 of this Official Journal.

⁽³⁾ OJ L 24, 30.1.1998, p. 1.

⁽⁴⁾ OJ L 20, 26.1.1996, p. 59.

⁽⁵⁾ OJ L 91, 7.4.1999, p. 10.

⁽⁶⁾ OJ L 204, 21.7.1998, p. 37. Directive as amended by Directive 98/48/EC (OJ L 217, 5.8.1998, p. 18).

been taken into account in the preparations. 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 in line with 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 should inform the European Parliament and the Council whether Community policies are affected, with a view to obtaining endorsement by the Council on the Community policy objectives to be achieved and on the positions to be taken by Member States at international level. In order to ensure that such positions also appropriately address the technical dimension related to radio spectrum management, the Commission may issue mandates to the CEPT for this purpose. Member States should accompany any act of acceptance of any agreement or regulation within international fora in charge of, or concerned with, radio spectrum management by a joint declaration stating that they will apply such agreement or regulation in accordance with their obligations under the Treaty.

- (20) In addition to international negotiations specifically addressing radio spectrum, there are other international agreements involving the Community and third countries which may affect radio frequency bands usage and sharing plans and which may address issues such as 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. It is therefore important to ensure compatibility between the Community's arrangements for negotiating trade and market access issues with the radio spectrum policy objectives to be pursued under this Decision.
- (21) 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 radio spectrum policy and management, that the national authorities apply common principles in the field of confidentiality laid down in this Decision.
- (22) Since the objective of the proposed action, namely to establish a common framework for radio spectrum policy, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out

in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Decision does not go beyond what is necessary in order to achieve that objective.

- (23) Member States should implement this common framework for radio spectrum policy in particular through their national authorities and provide the Commission with the relevant information required to assess its proper implementation throughout the Community, taking into account international trade obligations of the Community and its Member States.
- (24) Decisions No 710/97/EC and No 128/1999/EC remain in force.
- (25) The Commission should report annually to the European Parliament and the Council on the results achieved under this Decision, as well as on planned future actions. This may allow the European Parliament and the Council to express their political support, where appropriate,

HAVE ADOPTED THIS DECISION:

Article 1

Aim and scope

1. The aim of this Decision is to establish a policy and legal framework in the Community in order to ensure the coordination of policy approaches and, where appropriate, harmonised conditions with regard to the availability and efficient use of the radio spectrum necessary for the establishment and functioning of the internal market in Community policy areas such as electronic communications, transport and research and development (R & D).
2. In order to meet this aim, this Decision establishes procedures in order to:
 - (a) facilitate policy making with regard to the strategic planning and harmonisation of the use of radio spectrum in the Community taking into consideration *inter alia* economic, safety, health, public interest, freedom of expression, cultural, scientific, social and technical aspects of Community policies as well as the various interests of radio spectrum user communities with the aim of optimising the use of radio spectrum and of avoiding harmful interference;
 - (b) ensure the effective implementation of radio spectrum policy in the Community, and in particular establish a

general methodology to ensure harmonised conditions for the availability and efficient use of radio spectrum;

- (c) ensure the coordinated and timely provision of information concerning the allocation, availability and use of radio spectrum in the Community;
- (d) ensure the effective coordination of Community interests in international negotiations where radio spectrum use affects Community policies.

3. Activities pursued under this Decision shall take due account of the work of international organisations related to radio spectrum management, e.g. the International Telecommunication Union (ITU) and the European Conference of Postal and Telecommunications Administrations (CEPT).

4. This Decision is without prejudice to measures taken at Community or national level, in compliance with Community law, to pursue general interest objectives, in particular relating to content regulation and audio-visual policy, to the provisions of Directive 1999/5/EC and to the right of Member States to organise and use their radio spectrum for public order and public security purposes and defence.

Article 2

Definition

For the purposes of this Decision, 'radio spectrum' includes radio waves in frequencies between 9 kHz and 3 000 GHz; radio waves are electromagnetic waves propagated in space without artificial guide.

Article 3

Committee procedure

1. The Commission shall be assisted by a committee ('the Radio Spectrum Committee').
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

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

4. The Committee shall adopt its rules of procedure.

Article 4

Function of the Radio Spectrum Committee

1. In order to meet the aim set out in Article 1, the Commission shall submit to the Radio Spectrum Committee, in accordance with the procedures set out in this Article, appropriate technical implementing measures with a view to ensuring harmonised conditions for the availability and efficient use of radio spectrum, as well as the availability of information related to the use of radio spectrum, as referred to in Article 5.

2. For the development of technical implementing measures referred to in paragraph 1 which fall within the remit of the CEPT, such as the harmonisation of radio frequency allocation and of information availability, the Commission shall issue 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 3(2).

3. On the basis of the work completed pursuant to paragraph 2, the Commission shall decide whether the results of the work carried out pursuant to the mandates shall apply in the Community and on the deadline for their implementation by the Member States. 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 3(3).

4. Notwithstanding paragraph 3, if the Commission or any Member State considers that the work carried out on the basis of a mandate issued 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, acting in accordance with the procedure referred to in Article 3(3), measures to achieve the objectives of the mandate.

5. The measures referred to in paragraphs 3 and 4 may, where appropriate, provide the possibility for transitional periods and/or radio spectrum sharing arrangements in a Member State to be approved by the Commission, where justified, taking into account the specific situation in the Member State, on the basis of a reasoned request by the Member State concerned and provided such exception would not unduly defer implementation or create undue differences in the competitive or regulatory situations between Member States.

6. To achieve the aim set out in Article 1, the Commission may also adopt technical implementing measures referred to in paragraph 1 which are not covered by paragraph 2, acting in accordance with the procedure referred to in Article 3(3).

7. With a view to contributing to the formulation, preparation and implementation of Community radio spectrum policy, and without prejudice to the procedures set out in this Article, the Commission shall consult the Radio Spectrum Committee periodically on the matters covered by Article 1.

Article 5

Availability of information

Member States shall ensure that their national radio frequency allocation table and information on rights, conditions, procedures, charges and fees concerning the use of radio spectrum, shall be published if relevant in order to meet the aim set out in Article 1. They shall keep this information up to date and shall take measures to develop appropriate databases in order to make such information available to the public, where applicable in accordance with the relevant harmonisation measures taken under Article 4.

Article 6

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. 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. When necessary to meet the aim set out in Article 1, common policy objectives 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 7

Notification

Member States shall give the Commission all information necessary for the purpose of verifying the implementation of this Decision. In particular, Member States shall immediately inform the Commission of the implementation of the results of the mandates pursuant to Article 4(3).

Article 8

Confidentiality

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

2. Paragraph 1 shall be without prejudice to the right of relevant 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 radio spectrum which does not include information of a confidential nature.

Article 9

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, as well as on future actions envisaged pursuant to this Decision.

Article 10

Implementation

Member States shall take all measures necessary, by laws, regulations and administrative provisions, for the implementation of this Decision and all resulting measures.

Article 11

Entry into force

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

Article 12

Addressees

This Decision is addressed to the Member States.

Done at Brussels, 7 March 2002.

For the European Parliament

The President

P. COX

For the Council

The President

J. C. APARICIO