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*****I** **REPORT**

on the proposal for a decision of the European Parliament and of the Council
on the selection and authorisation of systems providing mobile satellite
services (MSS)
(COM(2007)0480 – C6-0257/2007 – 2007/0174(COD))

Committee on Industry, Research and Energy

Rapporteur: Fiona Hall

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a decision of the European Parliament and of the Council on the selection and authorisation of systems providing mobile satellite services (MSS) (COM(2007)0480 – C6-0257/2007 – 2007/0174(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0480),
 - having regard to Articles 251(2) and 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0257/2007),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, Research and Energy and the opinion of the Committee on Culture and Education (A6-0077/2008),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1 Recital 5

(5) The introduction of new systems providing mobile satellite services (MSS) would contribute to the development of the internal market and enhance competition by increasing the availability of pan-European services and end-to-end connectivity as well as encouraging efficient investment. MSS constitute an innovative alternative platform for various types of pan-European telecommunications and broadcasting/multicasting services, regardless of the location of end users, such as high-speed internet/intranet access,

(5) The introduction of new systems providing mobile satellite services (MSS) would contribute to the development of the internal market and enhance competition by increasing the availability of pan-European services and end-to-end connectivity as well as encouraging efficient investment. MSS constitute an innovative alternative platform for various types of pan-European telecommunications and broadcasting/multicasting services, regardless of the location of end users, such as high-speed internet/intranet access,

mobile multimedia and public protection and disaster relief. These services could in particular improve coverage of rural areas in the Community, thus bridging the digital divide in terms of geography, simultaneously contributing to the competitiveness of European information and communication technology industries in line with the objectives of the renewed Lisbon strategy.

mobile multimedia and public protection and disaster relief. These services could in particular improve coverage of rural areas in the Community, thus bridging the digital divide in terms of geography, ***strengthening cultural diversity and media pluralism, which are major EU objectives, and*** simultaneously contributing to the competitiveness of European information and communication technology industries in line with the objectives of the renewed Lisbon strategy.

Justification

Mobile television services and promoting cultural diversity and media pluralism can make a significant contribution towards realising the Lisbon objectives. It is important to establish the proper framework, however, which includes promoting them in an MSS context.

MSS can enable various types of services and business models, not all of which will necessarily be the same everywhere in Europe. For instance, it is likely that content will vary across Europe. The complete set of EU and Lisbon strategy objectives should be included rather than just a subset. It should also be clarified that the applicability of these objectives is not limited to rural areas. Indeed, the combination of MSS with Complementary Ground Component could provide very attractive service offerings in urban and suburban areas.

Amendment 2 Article 1, paragraph 1

1. The purpose of this Decision is to ***create a Community procedure for the common selection of operators of mobile satellite systems as well as to lay down provisions for the coordinated authorisation by Member States of the selected operators to use radio spectrum for the operation of mobile satellite systems, in order to*** facilitate the development of a competitive internal market for mobile satellite services ***in*** the Community.

1. The purpose of this Decision is to facilitate the development of a competitive internal market for mobile satellite services ***across*** the Community ***and to ensure gradual coverage in all Member States.***

This Decision creates a Community procedure solely for the common selection of operators of mobile satellite systems that use the 2 GHz frequency band in accordance with Decision 2007/98/EC,

comprising radio spectrum from 1980 to 2010 MHz for Earth to space communications and from 2170 to 2200 MHz for space to Earth communications. It also lays down provisions for the coordinated authorisation by Member States of the selected operators to use the assigned radio spectrum within this band for the operation of mobile satellite systems.

Amendment 3
Article 1, paragraph 5

5. This Decision applies to the 2 GHz frequency band, comprising radio spectrum from 1980 to 2010 MHz for Earth to space communications, and from 2170 to 2200 MHz for space to Earth communications, according to Decision 2007/98/EC. *deleted*

Amendment 4
Article 2, paragraph 1

1. The definitions laid down in Directive 2002/21/EC *and* Directive 2002/20/EC shall apply for the purposes of this Decision.

1. The definitions laid down in Directive 2002/21/EC, Directive 2002/20/EC, ***Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)¹ and Directive 89/552/EEC of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)²*** shall apply for the purposes of this Decision.

¹ OJ L 108, 24.4.2002, p. 51.

² OJ L 298, 17.10.1989, p. 23. Directive as last amended by Directive 2007/65/EC (OJ L 332, 18.12.2007, p. 27).

Justification

Content services are regulated by the audiovisual media services directive and will account for a significant proportion of MSS offerings. At the same time, some provisions of the existing Regulatory Framework make clear the conditions under which obligations (e.g. for Must carry in the Universal Directive) have to apply.

Amendment 5 Article 3, paragraph 2

2. The procedure shall aim to bring the 2 GHz frequency band into use without undue delay while allowing applicants a fair and non-discriminatory opportunity to participate in the comparative selection procedure.

2. The procedure shall aim **solely** to bring the 2 GHz frequency band into use **for MSS** without undue delay while **ensuring transparency for interested third parties** and allowing applicants a fair and non-discriminatory opportunity to participate in the comparative selection procedure.

Amendment 6 Article 3, paragraph 3

Article 3

Comparative selection procedure

3. The Commission shall define, in accordance with the procedure referred to in Article 10(2):

(a) the frequency bands;

(b) the amount of spectrum to be assigned to the selected applicants;

(c) detailed requirements of the comparative selection procedure;

(d) the particulars and documents to be included in applications;

(e) the conditions under which information about applications can be

Article 3

Comparative selection procedure

3. The Commission shall define, in accordance with the procedure referred to in Article 10(2):

(b) the amount of spectrum to be assigned to the selected applicants

(d) the particulars and documents to be included in applications;

disclosed.

The call for applications and any detailed requirements defined *pursuant to this paragraph* shall be published in the Official Journal of the European Union.

The call for applications and any detailed requirements defined *in accordance with the regulatory procedure with scrutiny referred to in Article 10(3a)* shall be published in the Official Journal of the European Union.

Amendment 7

Article 4, paragraph 1, point (b)

(b) applications shall identify the amount of radio spectrum requested and shall include statements and evidence concerning the required milestones and the selection criteria as well as any other particulars and documents.

(b) applications shall identify the amount of radio spectrum requested, ***which shall be no more than 15 MHz for Earth to space and 15 MHz for space to Earth*** and shall include statements and evidence concerning the radio spectrum requested, the required milestones and the selection criteria as well as any other particulars and documents.

Amendment 8

Article 4, paragraph 1, point (ba) new

(ba) applications shall include a commitment on the part of the applicant that:

(i) the mobile satellite system proposed shall provide a service in at least 60% of the aggregate land area of the Member States, from the time the mobile satellite service commences;

(ii) the mobile satellite service shall be provided in all the Member States and to at least 50% of the population and over at least 60% of the aggregate land area of each Member State by the time stipulated by the applicant but in any event no later than seven years from the date of the publication of the Commission's decision adopted pursuant to Article 5(2) or Article 6(3).

Justification

In order to bridge the digital divide it is important for mobile satellite services to cover areas outside the main urban areas of Member States and achieve the best services possible.

Amendment 9

Article 4, paragraph 1, point (bb) (new)

...

(bb) applications shall include a commitment on the part of the applicant to allow the mobile satellite system proposed to be made available to public protection and disaster relief services if and for the time required by the Member State in question, as provided for in Article 7(2)(b).

Amendment 10

Article 5, paragraph 1

1. Within 40 working days following publication of the list of admissible applicants, the Commission shall assess whether applicants have demonstrated the required level of technical and commercial development of their respective mobile satellite systems. Such assessment shall rely on the completion of ***a number of the milestones listed*** in the Annex to this Decision. ***These milestones will be further defined by the Commission in accordance with the procedure referred to in Article 10(2).*** Credibility and viability of the proposed mobile satellite systems shall be taken into account throughout this selection phase.

1. Within 40 working days following publication of the list of admissible applicants, the Commission shall assess whether applicants have demonstrated the required level of technical and commercial development of their respective mobile satellite systems. Such assessment shall rely on the ***satisfactory*** completion of milestones ***one to five set out*** in the Annex to this Decision. ***The*** credibility of ***applicants*** and ***the*** viability of the proposed mobile satellite systems shall be taken into account throughout this selection phase.

Justification

Candidates providing objective requirements shall be allowed to participate in the first selection phase on a fair and non-discriminatory basis.

Milestones one to five are the initial steps of a satellite investment, therefore enabling public authorities to assess the real commitment of applicants with credible projects.

Initial service area coverage of the proposed mobile satellite systems should be set at a sufficient level, therefore leveraging the coverage capacity of such systems, while ensuring that the initial step does not risk discouraging needed investments by candidate operators.

Amendment 11

Article 6, paragraph 1, introductory part

1. If the combined demand for radio spectrum requested by eligible applicants identified in the first selection phase exceeds the amount of radio spectrum available, identified pursuant to Article 3(3), the Commission shall select eligible applicants according to the following **further** criteria:

1. If the combined demand for radio spectrum requested by eligible applicants identified in the first selection phase exceeds the amount of radio spectrum available, identified pursuant to Article 3(3), the Commission shall select eligible applicants according to the following **weighted** criteria:

Justification

Criteria should be weighted according to their relative importance.

Amendment 12

Article 6, paragraph 1, point (a)

(a) consumer and competitive benefits;

(a) consumer and competitive benefits
(20% weighting):

This criterion concerns the consumer and competitive benefits which the applicant's proposed system provides. The criterion comprises two sub-criteria:

(i) the number of end-users and the range of services provided;

(ii) the date of commencement of the commercial services;

Justification

Specification of the criterion.

Amendment 13

Article 6, paragraph 1, point (b)

(b) spectrum efficiency;

(b) spectrum efficiency **(10% weighting)**:

This criterion concerns the aggregated data stream capacity.

Amendment 14

Article 6, paragraph 1, point (c)

(c) **pan-EU** geographic coverage;

(c) **pan-European** geographic coverage **(40% weighting)**:

This criterion concerns the geographic area to which services are provided by the applicant's proposed system. The criterion comprises three sub-criteria:

(i) the number of Member States in which at least 50% of the population is within the service area by the date of commencement of the continuous service;

(ii) the degree of geographical coverage (DGC) of the aggregate land area of the Member States lying within Europe at the time of commencement of the continuous services;

(iii) the time stipulated by the applicant when the mobile satellite service will be available in all Member States and to at least 50% of the population and in at least 60% of the aggregate land area of each Member State.

Amendment 15

Article 6, paragraph 1, point (d)

(d) public policy objectives.

(d) public policy objectives **(30% weighting)**:

This criterion concerns the extent to which the applicant's proposed system contributes to achieving certain public policy objectives not addressed by the criteria mentioned in points (a) to (c). The criterion comprises three sub-criteria:

(i) the provision of vital public interest services (such as public protection and disaster relief) that contribute to the protection of the health, safety or security of citizens of the Union;

(ii) the integrity and security of the services proposed in the system;

(iii) the ability of the proposed system to bridge the digital divide between regions.

Amendment 16
Article 6, paragraph 2

2. *The detailed requirements under* each selection criterion shall be defined by the Commission in accordance with the procedure referred to in Article **10(2)**. Credibility and viability of the proposed mobile satellite systems shall be taken into account throughout this selection phase.

2. *Further details of* each selection criterion *referred to in paragraph 1* shall be defined by the Commission in accordance with the *regulatory* procedure *with scrutiny* referred to in Article **10(3a)**. *The* credibility and *the* viability of the proposed mobile satellite systems shall be taken into account throughout this selection phase.

Justification

Comitology as for the amendment on Article 3, paragraph 3, 1st subparagraph.

Amendment 17
Article 6, paragraph 3 a (new)

(3a) The Commission shall publish its decision in the Official Journal of the European Union within one month.

Amendment 18
Article 7, paragraph 1

1. Member States *to be covered by the system of the selected applicant* shall ensure that their competent authorities

1. Member States shall ensure that their competent authorities grant to *selected applicants, in accordance with the time*

grant to **such** applicant any right to use the specific radio frequency identified in the Commission decision adopted pursuant to Article 5(2) or Article 6(3) and any **authorisation** necessary for the operation of **a** mobile satellite system. **The Commission decision shall set the time limit in which the rights and authorisations shall be granted.**

stipulated by the applicants under Article 4(1)(ba)(i), with Community law and with national law, the right to use the specific radio frequency identified in the Commission decision adopted pursuant to Article 5(2) or Article 6(3) and any authorisation necessary for the operation of **the proposed** mobile satellite system.

Amendment 19

Article 7, paragraph 2, point (b)

(b) applicants shall meet **the** milestones **identified** in the Annex to this Decision **according to the deadlines defined by the Commission in accordance with the procedure referred to in Article 10(2);**

(b) applicants shall meet milestones **six to nine set out** in the Annex to this Decision **within 22 months of the Commission's decision taken pursuant to Article 6(3);**

Justification

Specifying a deadline for completion of all nine milestones enhances clarity and certainty.

Amendment 20

Article 7, paragraphe 2, point (c)

(c) applicants selected according to Article 5(2) shall meet minimum requirements related to consumer and competitive benefits, spectrum efficiency, pan-European coverage, and public policy objectives as further defined by the Commission in accordance with the procedure referred to in Article 10(2);

deleted

Amendment 21

Article 7, paragraph 2, point (c a) (new)

(ca) applicants shall honour any commitments they give in their applications or during the comparative selection procedure, irrespective of whether the combined demand for radio spectrum exceeds the amount available;

Justification

Applicants who succeed at the first selection phase must be bound to the commitments offered at this stage.

Amendment 22
Article 7, paragraph 2, point (e)

(e) applicants shall meet any commitment undertaken during the comparative selection procedure; ***deleted***

Justification

Covered by amendment on article 7, paragraph 2, point ca) (new).

Amendment 23
Article 7, paragraph 2, point (f)

(f) rights of use and authorisations shall be granted for a duration defined by the Commission in accordance with the procedure referred to in Article 10(2). ***(f) rights of use and authorisations shall be granted for a period of fifteen years.***

Justification

Specifying the duration of the authorisation enhances clarity and certainty.

Amendment 24
Article 7, paragraph 2 a (new)

2a. Member States may, in accordance with Decision 2007/98/EC, grant rights of use of specific frequency sub-bands for such time and to such extent as they remain outside the service area of the selected applicants.

Justification

As long as some spectrum is not used by the selected applicants in a given Member State, the latter should be in a position to optimize spectrum usage by allowing other candidate services.

Amendment 25
Article 7, paragraph 2 b (new)

2b. Member States may, in accordance with Community law and in particular Directive 2002/20/EC, impose reasonable obligations upon public protection and disaster relief services in connection with their use of mobile satellite systems falling under the jurisdiction of their national authorities. Such obligations shall be imposed only where they are necessary to meet clearly defined public interest objectives and shall be proportionate, transparent and subject to periodic review.

Amendment 26
Article 8, paragraph 3, point (d)

(d) rights of use and authorisations shall be granted for a ***duration defined by the Commission in accordance with the procedure referred to in Article 10(2).***

(d) rights of use and authorisations shall be granted for a ***period of time ending no later than the expiry of the authorisation of the associated mobile satellite system.***

Justification

Specifying the duration of the authorisation enhances clarity and certainty.

Amendment 27
Article 9, paragraph 3

3. The Commission shall define, in accordance with the procedure referred to in ***Article 10(2)***, any appropriate modalities for coordinated monitoring and/or enforcement procedures, including coordinated suspension or withdrawal of authorisations, in particular for breaches of the common conditions provided for in Article 7(2).

3. The Commission shall define, in accordance with the ***regulatory*** procedure ***with scrutiny*** referred to in ***Article 10(3a)***, any appropriate modalities for coordinated monitoring and/or enforcement procedures, including coordinated suspension or withdrawal of authorisations, in particular for breaches of the common conditions provided for in Article 7(2).

Justification

Comitology as for Amendment 2.

Amendment 28
Article 9, paragraphe 3 a (new)

3a. The Commission shall review the compatibility with Community competition law of and, if necessary, take appropriate enforcement measures concerning any proposed merger of applicants or any proposed takeover of an applicant by another where this would result in the allocation of more than 15MHz for Earth to space and 15MHz for space to Earth to the proposed combined operator.

Justification

In order to promote competition several independent operators should be selected and maintained. The Commission should investigate any subsequent mergers or takeovers between applicants after authorisation is granted. If necessary the Commission should be able to revoke authorisation where a merger or takeover would be anti-competitive. This would prevent one applicant from becoming the sole operator of MSS. This amendment is in line with the Rapporteur's Amendment 4.

Amendment 29
Article 10, paragraph 3 a (new)

3a. Where reference is made to this paragraph, Article 5a (1) to (4) and (5)(b), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The time limits laid down in Article 5a(3)(c), (4)(b) and (4)(e) of Decision 1999/468/EC shall be one month.

Justification

The regulatory procedure with scrutiny should be followed for the adoption of measures of general scope which seek to amend non-essential elements of the basic instrument by supplementing it by the addition of new non-essential elements. The scrutiny should be curtailed to one month for efficiency reasons.

Amendment 30
Annex, point 1

1. Submission of International Telecommunications Union (ITU) request for co-ordination

1. Submission of International Telecommunications Union (ITU) request for co-ordination

The applicant shall provide clear evidence that the administration responsible for an MSS system has submitted the relevant ITU RR Appendix 4 information.

Justification

Specification of the milestone.

Amendment 31
Annex, point 2

2. Satellite manufacturing

2. Satellite manufacturing

The applicant shall provide clear evidence of a binding agreement for the manufacture of its satellites. The document shall identify the construction milestones leading to the completion of manufacture of satellites required for the commercial service provision. The document shall be signed by the applicant and the satellite manufacturing company.

Justification

Specification of the milestone.

Amendment 32
Annex, point 3

3. Completion of the Critical Design Review

5. Completion of the Critical Design Review

The Critical Design Review is the stage in the spacecraft implementation process at which the design and development phase ends and the manufacturing phase starts.

The applicant shall provide clear evidence of the completion, not later than 80 working days after the submission of the application, of the Critical Design Review in accordance with the construction milestones indicated in the satellite manufacturing agreement. The relevant document shall be signed by the satellite manufacturing company and shall indicate the date of the completion of the Critical Design Review.

Amendment 33
Annex, point 4

4. Satellite launch agreement

3. Satellite launch agreement

The applicant shall provide clear evidence of a binding agreement to launch the minimum number of satellites required to provide a continuous service within the territories of the Member States. The document shall identify the launch dates and launch services and the contractual terms and conditions concerning indemnity. The document shall be signed by the applicant and the satellite launching company.

Justification

Specification of the milestone.

Amendment 34
Annex, point 5

5. Gateway Earth Stations

4. Gateway Earth Stations

The applicant shall provide clear evidence of a binding agreement for the construction and installation of Gateway Earth Stations that will be used to provide mobile satellite services within the territories of the EU Member States.

Justification

Specification of the milestone.

Amendment 35
Annex, point 6

6. Satellite mating

6. Satellite mating

Mating is the stage in the spacecraft implementation process at which the Communication Module (CM) is integrated with the Service Module (SM).

The applicant shall provide clear evidence that the Test Readiness Review for SM/CM mating has taken place in accordance with the construction milestones indicated in the satellite manufacturing agreement. The relevant document shall be signed by the satellite manufacturing company and shall indicate the date of the completion of the satellite mating.

Justification

Specification of the milestone.

Amendment 36
Annex, point 7

7. Launch of satellites

7. Launch of satellites

The applicant shall provide clear evidence of the successful launch and in-orbit deployment of the number of satellites required for service provision within the territories of the Member States.

Justification

Specification of the milestone.

Amendment 37
Annex, point 8

8. Frequency co-ordination

8. Frequency co-ordination

The applicant shall provide clear and documented evidence relating to the successful frequency co-ordination of the system with respect to other MSS systems pursuant to the relevant provisions of the Radio Regulations. However, a system which demonstrates compliance with milestones 1 to 7 is not obliged to demonstrate at this stage completion of successful frequency co-ordination with those mobile satellite systems which fail to comply adequately and reasonably with milestones 1 to 7.

Justification

Specification of the milestone.

Amendment 38

Annex, point 9

9. Provision of satellite service within the territories of EU Member States

9. Provision of satellite service within the territories of EU Member States

The applicant shall provide clear evidence that it is effectively providing the commercial mobile satellite services within the territories of the Member States using the number of satellites it has previously identified under milestone 3.

Justification

Specification of the milestone.

EXPLANATORY STATEMENT

Mobile satellite services provide telecommunication between space stations (satellites) and mobile earth stations, either directly or via fixed complementary ground components (CGC). MSS have existed since the 1970s for emergency, distress and safety communications, especially for ships and aircraft since it is easy to fix the necessary “line of sight” at sea and in the air. Early MSS offerings were limited to low speed voice, fax and data but in the past ten years the capabilities and capacities of the systems have grown to include two-way multimedia, satellite news gathering and broad band internet access. Recent developments have included the use of MSS systems to provide the backhaul from aircraft to the ground in support of mobile communications on aircraft (MCA).

On land, many areas suffer disrupted MSS communication because of the presence of trees and buildings, particularly in high latitudes where the satellite may appear quite low in the sky and therefore be more vulnerable to blockage. This problem could be overcome if a network of CGCs were established, repeating the signals being transmitted by satellite. Such a system of CGCs, which could be established simply by modifying existing 2G/3G equipment, would open up the possibility of a wider range of MSS, including mobile TV.

On the basis of an International Telecommunications Union (ITU) decision designating radio frequency bands in the 2GHz region (1980 -2010 MHz earth to space and 2170-2200MHz space to earth) for use by systems providing mobile satellite services (MSS), the European Commission adopted in February 2007 a Decision that Member States should make these frequency bands available for a harmonised approach to MSS. Member States agreed to give up their national rights on spectrum allocation because MSS have a large satellite footprint making it difficult to avoid interference across national boundaries. Moreover, a harmonised approach to MSS avoids fragmentation of the internal market and opens up the possibility for European technology to become globally competitive in the spirit of the Lisbon agenda. The February 2007 Commission Decision did however recognise that Member States would retain the right to grant authorisation for the operation of CGC within their territories.

The Commission’s February 2007 Decision established that there should be a harmonised approach to MSS but did not set out how the operators of EU MSS should be selected and authorised. As there is no pre-existing mechanism for conducting such a process of selection and authorisation, a Decision of the Council and Parliament under Article 95 of the Treaty is required. The Decision on MSS is specific and *sui generis*. It is right that the selection and authorisation of MSS systems is being treated entirely separately from the Telecommunications package, which will undertake a broad and generalised reform of spectrum management based on the principles of service and technological neutrality. By contrast, the current Decision is about the executive steps of system selection and authorisation following a harmonised decision on the use of the 2GHz frequency bands for the particular purpose of MSS.

The rapporteur welcomes the Commission’s proposal and is broadly in agreement with it. The amendments she proposes arise from concern that some elements of the selection and authorisation are of a political rather than a purely technical nature and should not therefore be decided by simple comitology.

In its resolution of 14 February 2007 “Towards a European Policy on Radio Spectrum” the European Parliament made clear its commitment to services of public and general interest and emphasised the importance for rural and less developed regions of the diffusion of broadband and mobile communications. The rapporteur has therefore sought to make transparent in the text of the Decision the emphasis and weighting to be placed on, for example, public interest services and pan-European geographic coverage. Furthermore, the rapporteur proposes that where comitology is proposed to supplement the provisions of this decision it should be a process of comitology with scrutiny with curtailment of the deadlines to one month on the grounds of efficiency.

This Decision offers a unique opportunity for European providers of MSS to become world leaders in an increasingly competitive global market, but this opportunity will slip out of grasp unless the process of selection and authorisation of MSS systems is decided immediately. In the interests of European citizens and European industry, the rapporteur hopes that Parliament, Commission and Council will work closely together to achieve an early, first-reading agreement.

10.3.2008

OPINION OF THE COMMITTEE ON CULTURE AND EDUCATION

for the Committee on Industry, Research and Energy

on the proposal for a decision of the European Parliament and of the Council on the selection and authorisation of systems providing mobile satellite services (MSS)
(COM(2007)0480 – C6-0257/2007 – 2007/0174(COD))

Draftswoman: Ruth Hieronymi

SHORT JUSTIFICATION

The aim of the Commission proposal for a Council-Parliament decision on the selection and authorisation of systems providing mobile satellite services (MSS) is to establish a common EU-wide internal market for those services as quickly as possible. MSS should help realise the Lisbon objectives, promote innovation and flexibility and thus improve EU-wide broadband access and service choice for consumers.

The draftswoman supports the aim of the Commission proposal in principle, but finds the timing of the procedure problematic in that specific arrangements are being determined for MSS before the revision of the telecoms package and spectrum policy has taken place.

The MSS decision should therefore be adopted as a strictly exceptional arrangement and not create a precedent. This exception can be justified only if it is restricted to the Commission-led procedure for MSS system operators with a view to EU-wide broadband coverage. Under current provisions, Member States remain competent for decisions on spectrum allocation for individual services on the basis of a uniform framework, including the audiovisual media services directive. As regards spectrum allocation, in addition, the draftswoman points to the importance of different licensing models for the various types of mobile service and to their importance for cultural diversity and media pluralism. She calls for spectrum allocation for terrestrial components to be in line with national media law and for a report on the further development of MSS.

AMENDMENTS

The Committee on Culture and Education calls on the Committee on Industry, Research and Energy, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Recital 2

(2) The European Parliament, in its Resolution 2006/2212 "Towards a European Policy on the Radio Spectrum" of 14 February 2007, emphasised the importance of communications for rural and less developed regions, for which the diffusion of broadband, of lower frequency mobile communications and of new wireless technologies could provide efficient solutions to achieving universal coverage of the 27 EU Member States with a view to the sustainable development of all areas. The European Parliament ***also noted that Member States' regimes for spectrum allocation and exploitation differ widely and that these differences represent serious obstacles to the achievement of a well-functioning single market***

(2) The European Parliament, in its Resolution 2006/2212 "Towards a European Policy on the Radio Spectrum" of 14 February 2007, emphasised the importance of communications for rural and less developed regions, for which the diffusion of broadband, of lower frequency mobile communications and of new wireless technologies could provide efficient solutions to achieving universal coverage of the 27 EU Member States with a view to the sustainable development of all areas. The European Parliament ***rejects a one-sided market model for spectrum allocation, however, and calls for a system permitting various licensing models, with the guiding principle being the broadest possible coverage as many people as possible.***

Amendment 2

Recital 3 a (new)

(3a) From a regulatory perspective, legislation for MSS before the telecommunications package is revised is problematic and should therefore be adopted only as a strictly exceptional arrangement. However, its adoption as an exceptional arrangement does not mean lowering the requirements for selection and licensing.

Amendment 3

Recital 5

(5) The introduction of new systems providing mobile satellite services (MSS)

(5) The introduction of new systems providing mobile satellite services (MSS)

would contribute to the development of the internal market and enhance competition by increasing the availability of pan-European services and end-to-end connectivity as well as encouraging efficient investment. MSS constitute an innovative alternative platform for various types of pan-European telecommunications and broadcasting/multicasting services, regardless of the location of end users, such as high-speed internet/intranet access, mobile multimedia and public protection and disaster relief. These services could in particular improve coverage of rural areas in the Community, thus bridging the digital divide in terms of geography, simultaneously contributing to the competitiveness of European information and communication technology industries in line with the objectives of the renewed Lisbon strategy.

would contribute to the development of the internal market and enhance competition by increasing the availability of pan-European services and end-to-end connectivity as well as encouraging efficient investment. MSS constitute an innovative **enabling** platform for **a wide range** of telecommunications and broadcasting/multicasting services **in Europe**, regardless of the location of end users, such as high-speed internet/intranet access, mobile multimedia **and mobile audiovisual media services**, and public protection and disaster relief. These services could in particular improve coverage of rural areas in the Community, thus bridging the digital divide in terms of geography, **strengthening cultural diversity and media pluralism, which are major EU objectives**, and simultaneously contributing to the competitiveness of European information and communication technology industries in line with the objectives of the renewed Lisbon strategy.

Justification

Mobile television services and promoting cultural diversity and media pluralism can make a significant contribution towards realising the Lisbon objectives. It is important to establish the proper framework, however, which includes promoting them in an MSS context.

MSS can enable various types of services and business models, not all of which will necessarily be the same everywhere in Europe. For instance, it is likely that content will vary across Europe. The complete set of EU and Lisbon strategy objectives should be included rather than just a subset. It should also be clarified that the applicability of these objectives is not limited to rural areas. Indeed, the combination of MSS with Complementary Ground Component could provide very attractive service offerings in urban and suburban areas.

Amendment 4 Recital 5 a (new)

(5a) However, the success of MSS and their contribution towards realising the Lisbon objectives is very much dependent on the availability of content and service offerings which are attractive to the mass market and diverse. Such culturally diverse offerings can appeal to a wide variety of audiences

and markets in Europe.

Justification

The mass-market aspect is indeed the most attractive opportunity for MSS, but it should be clarified that it is not limited to broadcasting content alone. Furthermore, different services may appeal to different markets in Europe, and there should be no “one size fits all” solution.

Amendment 5

Recital 8

(8) Radio spectrum technical management, as organised by Decision 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) in general and Commission Decision 2007/98/EC in particular, does not cover procedures for assignment of spectrum and granting rights of use for radio frequencies.

(8) ***To ensure compliance with EU law, it is essential, in particular, that satellite spectrum be allocated in accordance with the general principles of spectrum management under Directive 2002/21/EC and national legislation, even if*** radio spectrum technical management, as organised by Decision 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) in general and Commission Decision 2007/98/EC in particular, does not cover procedures for assignment of spectrum and granting rights of use for radio frequencies.

Amendment 6

Recital 11

(11) In order to prevent Member States from taking decisions that might lead to fragmentation of the internal market and undermine the objectives identified in Article 8 of the Framework Directive, selection criteria for mobile satellite systems ***should*** be harmonised so that the selection process results in availability of the same set of mobile satellite services throughout Europe. High up-front investment required for the development of mobile satellite systems and the associated high technological and financial risks necessitate an economy of scale for such systems in the

(11) In order to prevent Member States from taking decisions that might lead to fragmentation of the internal market ***for MSS*** and undermine the objectives identified in Article 8 of the Framework Directive, selection criteria for mobile satellite systems ***are to*** be harmonised, ***as a strictly exceptional arrangement allowed by the European Parliament and the Council,*** so that the selection process results in availability of the same set of mobile satellite services throughout Europe. High up-front investment required for the development of mobile satellite systems and

form of wide pan-European geographic coverage, so that they remain economically viable.

the associated high technological and financial risks necessitate an economy of scale for such systems in the form of wide pan-European geographic coverage, so that they remain economically viable.

Amendment 7
Recital 12

(12) Moreover, the successful launch of such services requires coordination of regulatory action by Member States. Differences in national selection procedures could still create fragmentation of the internal market due to the divergent implementation of selection criteria, including the weighting of the criteria, or different timescales of the selection procedures. This would result in a patchwork of successful applicants selected in contradiction with the pan-European nature of these mobile satellite services. Selection of different mobile satellite operators by different Member States could imply complex harmful interference situations or could even mean that a selected operator is prevented from providing a pan-European service, for instance where different radio frequencies are assigned to the operator in different Member States. Therefore, harmonisation of the selection criteria should be supplemented by the establishment of a common selection mechanism that would provide a coordinated selection outcome for all Member States.

(12) Moreover, the successful launch of such services requires coordination of regulatory action by Member States. Differences in national selection procedures could still create fragmentation of the internal market due to the divergent implementation of selection criteria, including the weighting of the criteria, or different timescales of the selection procedures. This would result in a patchwork of successful applicants selected in contradiction with the pan-European nature of these mobile satellite services. Selection of different mobile satellite operators by different Member States could imply complex harmful interference situations or could even mean that a selected operator is prevented from providing a pan-European service, for instance where different radio frequencies are assigned to the operator in different Member States. Therefore, harmonisation of the selection criteria should be supplemented by the establishment of a common selection mechanism that would provide a coordinated selection outcome for all Member States, ***which, however, would not cover spectrum assignment and the granting of rights of use for radio frequencies. Moreover, due to the Member States' competence to ensure cultural and linguistic diversity and media pluralism in broadcasting, this coordinated selection is without prejudice to the application, by Member States, of their media law and media concentration law.***

Justification

This makes it clear that legislation on specific aspects, before the overall framework has been determined, is problematic from a regulatory perspective.

It lies within the competence of the Member States to ensure cultural and linguistic diversity and media pluralism for broadcasting. It is also important to ensure a level playing field in respect to other broadcasting services offered through other platforms (DVB-H).

Amendment 8

Recital 16

(16) The limited amount of radio spectrum available implies that the number of undertakings that may be selected and authorised *is* also ***necessarily*** limited. However, if the selection process leads to a finding that there is no radio spectrum scarcity, a simplified selection procedure should apply with a number of minimum requirements imposed on the selected mobile satellite operators as conditions attached to authorisations.

(16) The limited amount of radio spectrum available implies that the number of undertakings that may be selected and authorised *may* also *be* limited. ***At the same time, due to the high up-front investment required for the development of mobile satellite systems and due to the associated high technological and financial risks the number of companies participating in the selection process may also be limited. Therefore, the selection and authorisation procedure must be transparent, include the right of third parties to be heard and should not run contrary to competition law principles.*** However, if the selection process leads to a finding that there is no radio spectrum scarcity ***and no competition issues***, a simplified selection procedure should apply with a number of minimum requirements imposed on the selected mobile satellite operators as conditions attached to authorisations.

Amendment 9

Article 1, paragraph 1

1. The purpose of this Decision is to create a Community procedure for the common selection of operators of mobile satellite systems as well as to lay down provisions for the coordinated authorisation by Member States of the selected operators to use radio spectrum for the operation of mobile satellite systems, in order to facilitate the

1. The purpose of this Decision is to create a Community procedure ***solely*** for the common selection of operators of mobile satellite systems as well as to lay down provisions for the coordinated authorisation by Member States of the selected operators to use radio spectrum for the operation of mobile satellite systems, in order to facilitate

development of a competitive internal market for mobile satellite services in the Community.

the development of a competitive internal market for mobile satellite services in the Community.

Justification

It is very important to state that this is an exceptional regulatory arrangement which does not create a precedent.

Amendment 10
Article 1, paragraph 5

5. This Decision applies to the 2 GHz frequency band, comprising radio spectrum from 1980 to 2010 MHz for Earth to space communications, and from 2170 to 2200 MHz for space to Earth communications, according to Decision 2007/98/EC.

5. This Decision applies to the 2 GHz frequency band, comprising radio spectrum from 1980 to 2010 MHz for Earth to space communications, and from 2170 to 2200 MHz for space to Earth communications, according to Decision 2007/98/EC, **in compliance with the spectrum assignment provisions under Directive 2002/21/EC, in particular Article 9 of that Directive.**

Justification

It is essential that the new procedures for satellite spectrum assignment not be carried out until the political decisions have been taken on the basic regulatory framework for the individual categories of electronic communications services. At all events, they must be in line with the new provisions.

Amendment 11
Article 2, paragraph 1

1. The definitions laid down in Directive 2002/21/EC and Directive 2002/20/EC shall apply for the purposes of this Decision.

1. The definitions laid down in Directive 2002/21/EC, Directive 2002/20/EC, **Directive 2002/22/EC and Directive 2007/65/EC (the Audiovisual Media Services Directive)** shall apply for the purposes of this Decision.

Justification

Content services are regulated by the audiovisual media services directive and will account for a significant proportion of MSS offerings. At the same time, some provisions of the existing Regulatory Framework make clear the conditions under which obligations (e.g. for Must carry in the Universal Directive) have to apply.

Amendment 12
Article 3, paragraph 2

2. The procedure shall aim to bring the 2 GHz frequency band into use without undue delay while allowing applicants a fair and non-discriminatory opportunity to participate in the comparative selection procedure.

2. The procedure shall aim *solely* to bring the 2 GHz frequency band into use *for MSS* without undue delay while *being transparent for interested third parties* allowing applicants a fair and non-discriminatory opportunity to participate in the comparative selection procedure.

Amendment 13
Article 4, paragraph 1, point (b)

(b) applications shall identify the amount of radio spectrum requested and shall include statements and evidence concerning the required milestones and the selection criteria as well as any other particulars and documents.

(b) applications shall identify the amount of radio spectrum requested and shall include statements and evidence concerning the required milestones and the selection criteria as well as any other particulars and documents. *It shall also include statements and evidence that the foreseen business model does not raise competition concerns.*

Amendment 14
Article 5, paragraph 1

1. Within 40 working days following publication of the list of admissible applicants, the Commission shall assess whether applicants have demonstrated the required level of technical and commercial development of their respective mobile satellite systems. Such assessment shall rely on the completion of *a number of* the milestones listed in the Annex to this Decision. These milestones will be further defined by the Commission in accordance with the procedure referred to in Article 10(2). Credibility and viability of the proposed mobile satellite systems shall be taken into account throughout this selection phase.

1. Within 40 working days following publication of the list of admissible applicants, the Commission shall assess whether applicants have demonstrated the required level of technical and commercial development of their respective mobile satellite systems *and the absence of competition concerns*. Such assessment shall *take into consideration the results of the hearing of interested parties as well as* rely on the *satisfactory* completion of milestones *1 to 5* listed in the Annex to this Decision. *The target date for the completion of milestones 1 to 3 shall be no later than 1 October 2008.* These milestones will be further defined by the Commission in accordance with the procedure referred to in Article 10(2), *taking due regard of satellite industry practice*. Credibility and viability of the proposed mobile satellite systems

shall be taken into account throughout this selection phase

Justification

The Proposed Decision lists nine Milestones, but does not establish which ones form part of the first selection phase. The Consultation Document recognized Milestones 1 – 5 as highly relevant for the assessment of applicants. The Critical Design Review (CDR) is the well-established stage in a satellite program, representing a major commitment to service deployment. The CDR must form part of the spectrum scarcity test. As the objective is to “bring the (...) band into use without undue delay”, to grant national authorizations in early 2009, CDR should be completed by 1 October 2008.

Amendment 15
Article 5, paragraph 3

3. The Commission shall forthwith inform the applicants whether their applications have been considered as eligible for the second selection phase or have been selected according to paragraph 2. **The** Commission shall publish the list of eligible or selected applicants.

3. The Commission shall forthwith inform the applicants whether their applications have been considered as eligible for the second selection phase or have been selected according to paragraph 2. **The** Commission shall at the same time publish the list of eligible applicants **and its assessment under paragraph 1 or its decision in accordance with paragraph 2.**

Amendment 16
Article 6, paragraph 1

1. If the combined demand for radio spectrum requested by eligible applicants identified in the first selection phase exceeds the amount of radio spectrum available, identified pursuant to Article 3(3), the Commission shall select eligible applicants **according to** the following further criteria:

1. If the combined demand for radio spectrum requested by eligible applicants identified in the first selection phase exceeds the amount of radio spectrum available, identified pursuant to Article 3(3), the Commission shall **rank** eligible applicants **who, by guaranteeing wide-ranging pan-European geographic coverage, meet** the following further criteria in line **with the following priorities:**

Justification

Without wide-ranging pan-European geographic coverage, it is impossible to ensure spectrum efficiency to the benefit of consumers.

For democratic reasons, the selection criteria should be more precise to clearly define the

scope of discretion which the Commission can use in the selection and authorisation process.

It is essential that applicants comply with the filing and coordination process under the rules and regulations of the ITU in order to ensure that a network or system can be successfully coordinated and, therefore, brought into use. No legally sound selection can be undertaken otherwise. During the second selection phase, the Commission should rank eligible applicants according to the four criteria stated. Such ranking would then be followed by a decision of the Commission, taking into account the rules and procedures of the ITU.

Amendment 17

Article 6, paragraph 1, point (a)

- (a) consumer and competitive benefits; (a) consumer and competitive benefits
***through pan-EU geographic coverage,
such as infrastructure competition and
equal and open access to platforms;***

Justification

For democratic reasons, the selection criteria should be more precise to clearly define the scope of discretion which the Commission can use in the selection and authorisation process.

Amendment 18

Article 6, paragraph 1, point (a a) (new)

***(aa) public policy objectives including the
promotion of linguistic and cultural
diversity and media pluralism;***

Justification

For democratic reasons, the selection criteria should be more precise to clearly define the scope of discretion which the Commission can use in the selection and authorisation process.

Amendment 19

Article 6, paragraph 1, point (a b) (new)

(ab) spectrum efficiency;

Justification

For democratic reasons, the selection criteria should be more precise to clearly define the scope of discretion which the Commission can use in the selection and authorisation process.

Amendment 20
Article 6, paragraph 1, point (b)

(b) spectrum efficiency; ***deleted***

Amendment 21
Article 6, paragraph 1, point (c)

(c) pan-EU geographic coverage; ***deleted***

Amendment 22
Article 6, paragraph 1, point (d)

(d) public policy objectives. ***deleted***

Amendment 23
Article 6, paragraph 3 a (new)

(3a) The Commission will publish its decision in the Official Journal of the European Union within one month.

Amendment 24
Article 8, paragraph -1 (new)

-1. To ensure compliance with EU law, spectrum assignment for terrestrial components shall take place in coordination with the national institutions responsible for media law.

Justification

Frequency assignment is fundamentally a Member State competence.

Amendment 25
Article 8, paragraph 1

1. Member States shall ensure that, upon request, their competent authorities grant to the applicants selected in accordance with Title II and authorised to use the spectrum

1. Without prejudice to national media law and media concentration law, Member States shall ensure that, upon request, their competent authorities grant to the applicants

pursuant to Article 7 any authorisations necessary for the provision of complementary ground components of mobile satellite systems on their territories.

selected in accordance with Title II and authorised to use the spectrum pursuant to Article 7 any authorisations necessary for the provision of complementary ground components of mobile satellite systems on their territories.

Justification

The economic potential for MSS services lies in big cities and populated areas, where terrestrial frequencies will be needed to reach the customers. Member States must be involved in the decision on how to use these frequencies and to ensure that the offer complies with media law and media concentration law.

Amendment 26
Article 8, paragraph 3

3. **Any** national authorisations issued for the operation of complementary ground components of mobile satellite systems in the 2 GHz frequency band shall be subject to the following common conditions:

3. **Without prejudice to paragraph (1) of this Article any** national authorisations issued for the operation of complementary ground components of mobile satellite systems in the 2 GHz frequency band shall be subject to the following common conditions:

Justification

The economic potential for MSS services lies in big cities and populated areas, where terrestrial frequencies will be needed to reach the customers. Member States must be involved in the decision on how to use these frequencies and to ensure that the offer complies with media law and media concentration law.

Amendment 27
Article 8, paragraph 3, point (b)

(b) complementary ground components **shall constitute an integral part of a** mobile satellite **system and shall** be controlled by the satellite resource and network management mechanism; they **shall** use the same direction of transmission and the same portions of frequency bands as the associated satellite components and **shall** not increase the spectrum requirement of the associated mobile satellite system;

(b) complementary ground components **for** mobile satellite **systems should** be controlled by the satellite resource and network management mechanism; they **should** use the same direction of transmission and the same portions of frequency bands as the associated satellite components and **should** not increase the spectrum requirement of the associated mobile satellite system;

Amendment 28
Article 8, paragraph 3, point (d)

(d) rights of use and authorisations shall be granted for a duration defined by the Commission in accordance with the procedure referred to in Article 10(2).

(d) rights of use and authorisations shall be granted for a **reasonable** duration defined by the Commission in accordance with the procedure referred to in Article 10(2).

Amendment 29
Article 9, paragraph 3 a (new)

3a. No later than one year following the entry into force of this Decision, and every three years thereafter, the Commission shall forward a report on actual offerings for MSS in Member States to the European Parliament, the Council and the European Economic and Social Committee.

PROCEDURE

Title	Selection and authorisation of systems providing mobile satellite services
References	COM(2007)0480 – C6-0257/2007 – 2007/0174(COD)
Committee responsible	ITRE
Opinion by Date announced in plenary	CULT 3.9.2007
Drafts(wo)man Date appointed	Ruth Hieronymi 22.10.2007
Discussed in committee	18.12.2007
Date adopted	27.2.2008
Result of final vote	+: 28 -: 1 0: 0
Members present for the final vote	Katerina Batzeli, Ivo Belet, Marie-Hélène Descamps, Jolanta Dičkutė, Věra Flasarová, Milan Gaľa, Vasco Graça Moura, Luis Herrero-Tejedor, Ruth Hieronymi, Ramona Nicole Mănescu, Manolis Mavrommatis, Marianne Mikko, Ljudmila Novak, Dumitru Oprea, Zdzisław Zbigniew Podkański, Mihaela Popa, Karin Resetarits, Pál Schmitt, Salvatore Tatarella, Helga Trüpel, Thomas Wise, Tomáš Zatloukal
Substitute(s) present for the final vote	Emine Bozkurt, Erna Hennicot-Schoepges, Mary Honeyball, Christel Schaldemose, Grażyna Staniszevska, Cornelis Visser
Substitute(s) under Rule 178(2) present for the final vote	Wolfgang Bulfon

PROCEDURE

Title	Selection and authorisation of systems providing mobile satellite services		
References	COM(2007)0480 – C6-0257/2007 – 2007/0174(COD)		
Date submitted to Parliament	22.8.2007		
Committee responsible Date announced in plenary	ITRE 3.9.2007		
Committee(s) asked for opinion(s) Date announced in plenary	IMCO 3.9.2007	CULT 3.9.2007	
Not delivering opinions Date of decision	IMCO 3.10.2007		
Rapporteur(s) Date appointed	Fiona Hall 9.10.2007		
Discussed in committee	19.12.2007	29.1.2008	28.2.2008
Date adopted	6.3.2008		
Result of final vote	+: 40	–: 0	0: 0
Members present for the final vote	Šarūnas Birutis, Philippe Busquin, Jerzy Buzek, Jorgo Chatzimarkakis, Giles Chichester, Dragoş Florin David, Den Dover, Lena Ek, Nicole Fontaine, Norbert Glante, András Gyürk, Fiona Hall, David Hammerstein, Rebecca Harms, Ján Hudacký, Romana Jordan Cizelj, Pia Elda Locatelli, Eluned Morgan, Reino Paasilinna, Francisca Pleguezuelos Aguilar, Anni Podimata, Paul Rübig, Andres Tarand, Patrizia Toia, Catherine Trautmann, Nikolaos Vakalis		
Substitute(s) present for the final vote	Etelka Barsi-Pataky, Ivo Belet, Danutė Budreikaitė, Zdzisław Kazimierz Chmielewski, Robert Goebbels, Malcolm Harbour, Pierre Pribetich, John Purvis, Bernhard Rapkay, Esko Seppänen, Vladimir Urutchev		
Substitute(s) under Rule 178(2) present for the final vote	Chris Davies, Ruth Hieronymi, Jacques Toubon		