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REPORT

on the proposal for a directive of the European Parliament and of the Council amending Council Directive 87/372/EEC on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community (COM(2008)0762 – C6-0452/2008 – 2008/0214(COD))

Committee on Industry, Research and Energy

Rapporteur: Francisca Pleguezuelos Aguilar

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***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. 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). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council amending Council Directive 87/372/EEC on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community
(COM(2008)0762 – C6-0452/2008 – 2008/0214(COD))**

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0762),
 - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0452/2008),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, Research and Energy (A6-0276/2009),
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.

AMENDMENTS BY PARLIAMENT*

to a Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Directive 87/372/EEC on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community

* Political amendments: new or replacement text is marked in bold italics and deletions are indicated by the symbol **||**. Technical corrections and adaptations by the services: new or replacement text is marked in italics and deletions are indicated by the symbol **||**.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the procedure laid down in Article 251 of the Treaty³,

Whereas:

- (1) Council Directive 87/372/EEC of 25 June 1987 on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community⁴, complemented by Council Recommendation of 25 June 1987 on the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community⁵ and by Council Resolution of 14 December 1990 on the final stage of the coordinated introduction of pan-European land-based public digital mobile cellular communications in the Community (GSM)⁶, recognised the need to use the resources offered by modern telecommunications networks, in particular by mobile radio, to the full for the economic development of the Community. The unique opportunity offered by the move to the second generation cellular digital mobile communications system to establish truly pan-European mobile communications has been recognized.
- (2) The 890-915 MHz and 935-960 MHz frequency bands ■ were reserved for a public pan-European cellular digital mobile communications service to be provided in each Member State in accordance with a common specification, known as GSM. ***Subsequently the so-called extension band (880-890 MHz and 925-935 MHz) became available for GSM operation, and together these frequency bands are known as the 900 MHz band.***
- (3) Since 1987, new digital radio technologies capable of providing innovative pan-European electronic communications have been developed, which can coexist with GSM in the 900 MHz band in a more technologically neutral regulatory context. The 900 MHz band has good propagation characteristics, covering greater distances than

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C , , p. .

⁴ OJ L 196, 17.7.1987, p.85.

⁵ OJ L 196, 17.7.1987, p.81.

⁶ OJ C 329, 31.12.1990, p.25.

higher frequency bands, and allowing modern voice, data and multimedia services to be extended to less populated and rural areas.

- (4) While maintaining the availability of GSM for users throughout Europe, in order to contribute to the objectives of the internal market and of the i2010 initiative "A European Information Society for growth and employment"¹ and to maximise competition by offering users a wide choice of services and technologies, the use of the 900 MHz band should be available to other technologies for the provision of additional compatible advanced pan-European services that would coexist with GSM.
- (4a) *The future use of the 900 MHz band and in particular the question of how long GSM will remain the reference technology for technical coexistence in this band is a question of strategic importance for the internal market that should be examined together with other issues of the Community's wireless access policy in the future radio spectrum policy programmes, to be adopted in accordance 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)² as amended. Those programmes will set out the policy orientations and objectives for the strategic planning of the use of radio spectrum, in close cooperation with the Radio Spectrum Policy Group (RSPG).*
- (5) The liberalisation of the use of the 900 MHz spectrum band could possibly result in competitive distortions. In particular, where certain mobile operators have not been assigned spectrum in the 900 MHz band, they could be put at a disadvantage in terms of cost and efficiency in comparison with operators that will be able to provide 3G services in that band. Under the regulatory framework on electronic communications, and in particular Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)³, Member States can amend and/or review rights of use of spectrum and thus have the tools to deal, where required, with such possible distortions.
- Within six months of its entry into force, Member States should transpose this Directive. While this does not in itself require Member States to modify existing rights of use or to initiate an authorisation procedure, Member States must comply with the requirements of the Authorisation Directive once the spectrum band has been made available in accordance with this Directive. In doing so, they should in particular examine whether the implementation of this Directive could distort competition in the mobile markets concerned. If they conclude that this is the case, they should consider whether it is objectively justified and proportionate to amend the rights of use of those operators that were granted rights of use of 900 MHz frequencies and, where proportionate, to review these rights of use and to redistribute such rights in order to address such distortions. Any decision to take such a course of action should be preceded by a public consultation.*

¹ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, COM(2005) 229 final.

² **OJ L 108, 24.4.2002, p. 33.**

³ OJ L 108, 24.4.2002, p. 21.

- (5a) *Spectrum made available under this Directive should be allocated in a transparent manner and in such a way as to ensure no distortion of competition in the relevant markets.*
- (6) In order for systems, other than GSM, to coexist with GSM systems in the same band, harmful interference should be avoided by applying technical usage conditions applicable to technologies other than GSM using the 900 MHz band.
- (7) 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 (hereinafter the Radio Spectrum Decision)¹ allows the Commission to adopt technical implementing measures to ensure harmonised conditions for the availability and efficient use of the radio spectrum band.
- (8) As requested by the Commission, the European Conference of Postal and Telecommunications Administrations (hereinafter the CEPT) produced technical reports demonstrating that UMTS could coexist with GSM in the 900 MHz band **¶**. The **900 MHz band** should therefore be opened to UMTS **¶¶** as well as to other systems as soon as it can be demonstrated that they can co-exist with GSM in accordance with the procedure in the Radio Spectrum Decision for the adoption of harmonised conditions for the availability and efficient use of radio spectrum. *Where a Member State decides to assign rights of use for systems using the UMTS 900 specification, the application of the Radio Spectrum Decision, and the provisions of Directive 2002/21/EC, will ensure that such systems are protected from harmful interference from other systems in operation.*
- (9) Appropriate protection should be ensured *between users of the bands covered by this Directive and* for existing users in adjacent bands. Furthermore, prospective systems for aviation communications above 960 MHz, which help fulfilling Community policy objectives in this sector, should be taken into account. CEPT has produced technical advice in this respect.
- (9a) *Flexibility in spectrum management and access to spectrum should be increased in order to contribute to the objectives of the internal market in electronic communications. The 900 MHz band should therefore be open to other systems for the provision of other pan-European services as soon as it can be demonstrated that they can co-exist with GSM systems.*
- (10) In order to allow new digital technologies to be deployed in the 900 MHz band in coexistence with GSM systems, Directive 87/372/EEC should be amended accordingly and the exclusive reservation of this band for GSM should be removed,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 87/372/EEC is amended as follows:

¹ OJ L 108, 24.4.2002, p.1.

- (1) Article 1 is replaced by the following:

'Article 1

1. Member States shall make available the 880-915 MHz and 925-960 MHz radio spectrum bands (***the 900 MHz band***) for GSM systems and for UMTS systems as well as for other terrestrial systems capable of providing electronic communications services that can co-exist with GSM systems, in accordance with technical implementing measures adopted pursuant to Decision *No 676/2002/EC*.

2. Member States shall, when implementing this Directive, examine whether the existing assignment of ***the 900 MHz band*** to the competing mobile operators in their territory is likely to distort competition in the mobile markets concerned and, where justified and proportionate, they shall address such distortions in accordance with Article 14 of Directive 2002/20/EC.'

- (2) Article 2 is replaced by the following:

'Article 2

For the purposes of this Directive, the following definitions shall apply:

(a) "GSM system" shall mean an electronic communications network that complies with the GSM standards, as published by ETSI, in particular EN 301 502 and EN 301 511;

(b) "UMTS system" shall mean an electronic communications network that complies with the UMTS standards as published by ETSI, in particular EN 301 908-1, EN 301 908-2, EN 301 908-3 and EN 301 908-11'.

- (3) Article 3 is replaced by the following:

'Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within six months after the date of entry into force of this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.'

- (4) Article 4 is deleted.

Article 2

This Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

Article 3

This Directive is addressed to the Member States.

Done at||

For the European Parliament
The President

For the Council
The President

EXPLANATORY STATEMENT

An efficient radio spectrum policy in the European Union requires flexible and coordinated management by the Member States and the harmonisation of frequencies at Community level where this is justified for reasons of economies of scale and interoperability of devices and services. This is the only way of ensuring that we can make the most of the social and economic advantages offered by this scarce public resource, in terms of lower operating costs and greater business opportunities for electronic communications service providers, more and better communications services for consumers and the improved provision of public services for citizens.

In this context, the legislative proposal under review is aimed at making greater use of the 900 MHz band by allowing it to be used for UMTS technology, which offers higher capabilities, alongside GSM mobile communications technology. The technical studies carried out by the European Conference of Postal and Telecommunications Administrations (CEPT) confirm that both technologies can be used in this band without interference problems.

There is also a consensus and a feeling of urgency among mobile communications service providers regarding the desirability of permitting this new use in this band, since it will enable them to reduce the costs of deploying UMTS infrastructure and offer more innovative services to their clients at a more affordable price. For this reason, some Member States have already decided to allow the use of this band for UMTS technology and are awaiting the Community decision so that they can implement it with full legal guarantees.

In this light the rapporteur can only confirm the desirability of allowing this new use, with the aim of providing more and better mobile communications services for citizens at a lower price, through an amendment to the legislation, i.e. in a wholly transparent way with public consultation.

The rapporteur also welcomes the fact that, following Parliament's rejection of the Commission's initial proposal to repeal this Directive and regulate its subject matter, i.e. the use of the 900 MHz band, through a Commission decision in accordance with a comitology procedure, the Commission has modified its initial stance and is now proposing a legislative procedure. The institutional balance has thus been restored, avoiding a situation where what the co-legislator had decided would have been amended without its involvement.

The Commission proposal also includes an amendment to the Directive enabling the 900 MHz band to be opened to new uses in the future, in line with technological development. Even though this flexibility clause is welcome, the same cannot be said of the procedure proposed by the Commission: the regulatory procedure which excludes effective scrutiny by Parliament. The rapporteur is quite unable to understand why, if the first change to the use of the band is being made through the legislative channel, the decision on subsequent uses should evade parliamentary scrutiny.

With a view to providing the legal instrument with a greater degree of flexibility to adapt to new technological progress without jeopardising the requisite parliamentary scrutiny, the

rapporteur is proposing, by way of compromise, that the regulatory procedure with scrutiny be used to take decisions on new uses for this band. The proposed amendments are intended to justify this new procedure, which offers greater guarantees for parliamentary scrutiny, in the recitals and introduce it in the articles.

To sum up, the desirability of allowing flexible use of this band is supported in the interests of bringing about a more competitive mobile communications sector that will offer more and better services for citizens, but at the same time attention is drawn to the need to ensure parliamentary scrutiny of any future decisions on additional uses of the band in order to guarantee transparency and respect for the institutional balance.

PROCEDURE

Title	Frequency bands to be reserved for mobile communications
References	COM(2008)0762 – C6-0452/2008 – 2008/0214(COD)
Date submitted to Parliament	19.11.2008
Committee responsible Date announced in plenary	ITRE 4.12.2008
Committee(s) asked for opinion(s) Date announced in plenary	IMCO 4.12.2008
Not delivering opinions Date of decision	IMCO 1.12.2008
Rapporteur(s) Date appointed	Francisca Pleguezuelos Aguilar 2.12.2008
Discussed in committee	20.1.2009
Date adopted	21.4.2009
Result of final vote	+: 46 -: 0 0: 1
Members present for the final vote	Jan Březina, Jerzy Buzek, Giles Chichester, Dragoş Florin David, Pilar del Castillo Vera, Den Dover, Lena Ek, Nicole Fontaine, Norbert Glante, Fiona Hall, Rebecca Harms, Erna Hennicot-Schoepges, Romana Jordan Cizelj, Anne Laperrouze, Pia Elda Locatelli, Eugenijus Maldeikis, Eluned Morgan, Angelika Niebler, Reino Paasilinna, Atanas Papanizov, Francisca Pleguezuelos Aguilar, Anni Podimata, Miloslav Ransdorf, Vladimír Remek, Herbert Reul, Paul Rübig, Catherine Trautmann, Claude Turmes, Nikolaos Vakalis, Adina-Ioana Vălean, Dominique Vlasto
Substitute(s) present for the final vote	Alexander Alvaro, Ivo Belet, Göran Färm, Juan Fraile Cantón, Françoise Grossetête, Malcolm Harbour, Gunnar Hökmark, Erika Mann, Vittorio Prodi, Hannes Swoboda, Silvia-Adriana Țicău, Vladimir Urutchev, Lambert van Nistelrooij
Substitute(s) under Rule 178(2) present for the final vote	Bernard Lehideux, Zita Pleštinšká, Carl Schlyter
Date tabled	27.4.2009