

## COMMISSION DECISION

of 16 October 2009

**on the harmonisation of the 900 MHz and 1 800 MHz frequency bands for terrestrial systems capable of providing pan-European electronic communications services in the Community**

(notified under document C(2009) 7801)

(Text with EEA relevance)

(2009/766/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to 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)<sup>(1)</sup>, and in particular Article 4(3) thereof,

Whereas:

(1) The 890-915 and 935-960 MHz frequency bands were reserved and were to be occupied for the public pan-European cellular digital mobile communications service, as provided in each of the Member States to a common specification, identified by 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 Community<sup>(2)</sup>, and complemented by Council Recommendation of 25 June 1987 on the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community<sup>(3)</sup> 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)<sup>(4)</sup>.

(2) Directive 2009/114/EC of the European Parliament and of the Council<sup>(5)</sup> amends Directive 87/372/EEC and opens the 880-915 MHz and 925-960 MHz frequency bands (the 900 MHz band) to the Universal Mobile Telecommunications System (UMTS) and to other terrestrial systems capable of providing electronic communications services that can coexist with the Global System for Mobile communications (GSM), in accordance with

technical implementing measures adopted pursuant to Decision No 676/2002/EC (hereinafter the Radio Spectrum Decision). Technical measures should therefore be adopted to allow the coexistence of GSM and other systems in the 900 MHz band.

(3) The 1 710-1 785 MHz and 1 805-1 880 MHz frequency bands (the 1 800 MHz band) have become available for GSM operation and are currently used by GSM systems across Europe. The 1 800 MHz band should also be opened under the same conditions as the 900 MHz band to other terrestrial systems capable of providing electronic communications services that can coexist with GSM systems.

(4) The current use of GSM in the 1 800 MHz band should be protected throughout the Community as long as there is reasonable demand for the service, in line with the approach taken to protect the use of GSM in the 900 MHz band by Directive 87/372/EEC.

(5) Pursuant to Article 4(2) of the Radio Spectrum Decision, the Commission issued a mandate on 5 July 2006 to the European Conference of Postal and Telecommunications Administrations (hereinafter the CEPT) to develop least restrictive technical conditions for frequency bands addressed in the context of WAPECS (wireless access policy for electronic communications services), which include the 900 MHz and 1 800 MHz bands.

(6) Technological neutrality and service neutrality are policy goals that have been supported by the Member States in the Radio Spectrum Policy Group (hereinafter the RSPG) Opinion on WAPECS of 23 November 2005 to achieve more flexible use of spectrum. The RSPG Opinion on WAPECS considers that these policy goals should be introduced gradually rather than suddenly so as to avoid any disruption of the market. The Commission set out its views on the more flexible use of spectrum in its Communication on 'Rapid access to spectrum for wireless electronic communications services through more flexibility'<sup>(6)</sup>, which, *inter alia*, stresses the need for a consistent and proportionate solution regarding the second and third generation mobile bands in the context of introducing flexible spectrum use for electronic communications services.

<sup>(1)</sup> OJ L 108, 24.4.2002, p. 1.

<sup>(2)</sup> OJ L 196, 17.7.1987, p. 85.

<sup>(3)</sup> OJ L 196, 17.7.1987, p. 81.

<sup>(4)</sup> OJ C 329, 31.12.1990, p. 25.

<sup>(5)</sup> See page 25 of this Official Journal.

<sup>(6)</sup> COM(2007) 50.

- (7) In line with the approach taken to the opening of the 900 MHz band by Directive 87/372/EEC, the 1 800 MHz band currently used for GSM should therefore also be designated for GSM and for other terrestrial systems capable of providing electronic communications services which can coexist with GSM systems, and Member States should take whatever measures are necessary to protect the continued operation of GSM systems from harmful interference.
- (8) Any other system deployed in the 900 MHz and 1 800 MHz bands needs to ensure technical compatibility both with adjacent networks operated by other right holders in these bands and with the use of frequency bands adjacent to the 900 and 1 800 MHz bands.
- (9) For harmonisation measures pursuant to the Radio Spectrum Decision, technical compatibility is demonstrated by compatibility studies performed by the CEPT via a mandate from the Commission. These studies should help to define the technical conditions needed to ensure the coexistence of a growing number of terrestrial systems capable of providing electronic communications services. A list should be established of systems demonstrating such technical compatibility, which the Commission should amend, as appropriate, with the assistance of the Radio Spectrum Committee in line with the WAPECS principles, and thus increase the number of systems with harmonised access to the 900 and 1 800 MHz bands over time.
- (10) Working on the basis of technical investigations, in particular Reports 82 and 96 of the Electronic Communications Committee (ECC) of the CEPT, and on the response to the mandate of 5 July 2006 in CEPT Report 19, the CEPT has concluded that UMTS/900/1 800 networks can be deployed in urban, sub-urban and rural areas in coexistence with GSM/900/1 800 networks, using appropriate values for carrier separation.
- (11) The results of the mandate to the CEPT should be made applicable in the Community and implemented by the Member States without delay, given the market demand for the introduction of UMTS in these bands. In addition, Member States should ensure that UMTS gives appropriate protection to existing systems in adjacent bands.
- (12) To increase flexibility while at the same time preserving the necessary pan-European coverage by electronic communications services in harmonised bands, Member States should furthermore have the power to allow the introduction in the 900 and 1 800 MHz bands of other systems alongside GSM and other identified terrestrial systems capable of providing electronic communications services, provided that they ensure the coexistence of such terrestrial systems.
- (13) Radio spectrum technical management includes the harmonisation and allocation of radio spectrum. This 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 (including their timing), or any decision whether to use competitive selection procedures for the assignment of radio frequencies.
- (14) Differences in the existing national situations could result in distortion of competition. The existing regulatory framework gives Member States the tools they need to deal with these problems in a proportionate, non-discriminatory and objective manner, subject to Community law, including Directive 87/372/EEC, 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) <sup>(1)</sup> and 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) <sup>(2)</sup>.
- (15) The use of spectrum is subject to the requirements of Community law on public health protection, in particular Directive 2004/40/EC of the European Parliament and of the Council of 29 April 2004 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) (18th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) <sup>(3)</sup> and Council Recommendation 1999/519/EC of 12 July 1999 on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz) <sup>(4)</sup>. Health protection for radio equipment is ensured by compliance of such equipment with the essential requirements of 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 <sup>(5)</sup>.
- (16) In order to ensure effective use of the 900 MHz and 1 800 MHz bands also in the longer term, administrations should continue with studies to increase efficiency and innovative use. With a view to reviewing this Decision to cover additional technologies, these and other studies undertaken by the CEPT on the basis of further mandates could demonstrate that systems other than GSM and UMTS are capable of providing terrestrial electronic communications services with pan-European coverage and can ensure technical compatibility with GSM and UMTS by appropriate means.

<sup>(1)</sup> OJ L 108, 24.4.2002, p. 21.

<sup>(2)</sup> OJ L 108, 24.4.2002, p. 33.

<sup>(3)</sup> OJ L 159, 30.4.2004, p. 1.

<sup>(4)</sup> OJ L 199, 30.7.1999, p. 59.

<sup>(5)</sup> OJ L 91, 7.4.1999, p. 10.

(17) The measures provided for in this Decision are in accordance with the opinion of the Radio Spectrum Committee,

HAS ADOPTED THIS DECISION:

*Article 1*

This Decision aims to harmonise the technical conditions for the availability and efficient use of the 900 MHz band, in accordance with Directive 87/372/EEC, and of the 1 800 MHz band for terrestrial systems capable of providing electronic communications services.

*Article 2*

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

- (a) 'GSM system' means an electronic communications network that complies with the GSM Standards, as published by ETSI, in particular EN 301 502 and EN 301 511;
- (b) the '900 MHz band' means the 880-915 MHz and 925-960 MHz bands;
- (c) the '1 800 MHz band' means the 1 710-1 785 MHz and 1 805-1 880 MHz bands.

*Article 3*

The terrestrial systems capable of providing electronic communications services that can coexist with GSM systems in the 900 MHz band within the meaning of Article 1(1) of Directive 87/372/EEC are listed in the Annex. They shall be subject to the conditions and the implementation deadlines laid down therein.

*Article 4*

1. The 1 800 MHz band shall be designated and made available for GSM systems by 9 November 2009.

2. The 1 800 MHz band shall be designated and made available for those other terrestrial systems capable of providing electronic communications services that are listed in the Annex, subject to the conditions and implementation deadlines laid down therein.

*Article 5*

1. Member States may designate and make available the 900 MHz and 1 800 MHz bands for other terrestrial systems not listed in the Annex, provided that they ensure that:

- (a) such systems can coexist with GSM systems;
- (b) such systems can coexist with other systems listed in the Annex, both on their own territory and in neighbouring Member States.

2. Member States shall ensure that other systems referred to in Article 3 and Article 4(2) and paragraph 1 of this Article give appropriate protection to systems in adjacent bands.

*Article 6*

Member States shall keep the use of the 900 MHz and 1 800 MHz bands under review to ensure the efficient use thereof and in particular report to the Commission any need for a revision of the Annex.

*Article 7*

This Decision is addressed to the Member States.

Done at Brussels, 16 October 2009.

*For the Commission*

Viviane REDING

*Member of the Commission*

## ANNEX

**LIST OF TERRESTRIAL SYSTEMS REFERRED TO IN ARTICLE 3 AND ARTICLE 4(2)**

The following technical parameters shall be applied as an essential component of conditions necessary to ensure coexistence in the absence of bilateral or multilateral agreements between neighbouring networks, without precluding less stringent technical parameters if agreed among the operators of such networks.

Systems	Technical parameters	Implementation deadlines
UMTS complying with 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	<ol style="list-style-type: none"><li>1. Carrier separation of 5 MHz or more between two neighbouring UMTS networks</li><li>2. Carrier separation of 2,8 MHz or more between a neighbouring UMTS network and a GSM network</li></ol>	9 May 2010