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NOTE

From:	Presidency
To:	Permanent Representatives Committee
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Subject:	Proposal for a Decision of the European Parliament and of the Council on the use of the 470-790 MHz frequency band in the Union - Analysis of the final compromise text with a view to agreement

1. The first and final trilogue on the above proposal was held on 14 December 2016 where an informal agreement was reached on the basis of the text as reflected in Annex. *(It should be noted that the text has been re-numbered and put in its final sequence).*
2. The Permanent Representatives Committee is thus invited to:
 - endorse the annexed compromise text as agreed in the trilogue, and
 - mandate the Presidency to inform the European Parliament that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the compromise package contained in the Annex to this document (subject to revision by the lawyer linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

on the use of the 470-790 MHz frequency band in the Union

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

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 ordinary legislative procedure,

¹ OJ C, , p. .

² OJ C, , p. .

Whereas:

- (1) In the multiannual radio spectrum policy programme (RSPP) established by Decision No 243/2012/EU³, the European Parliament and the Council set the objectives of identifying at least 1 200 MHz of spectrum suitable for wireless broadband electronic communications services in the Union by 2015, of supporting the further development of innovative **broadcasting** services by ensuring sufficient spectrum for the satellite and terrestrial provision of such services, if the need is clearly substantiated, and of ensuring sufficient spectrum for programme making and special events (PMSE).
- (2) *This Decision should be without prejudice to measures taken at national level, in compliance with Union law, that pursue general interest objectives relating to the right of Member States to organise and use their spectrum for the purposes of public order, public security and defence.*
- (3) In its strategy for the digital single market (DSM)⁴, the Commission highlights the importance of the 694-790 MHz ('700 MHz') frequency band for ensuring the provision of broadband services in rural areas **in order to ensure access and connectivity**, and stresses the need for a coordinated release of that frequency band while accommodating the specific needs of **broadcasting** services distribution. **Reducing the digital divide, in coverage as well as in knowledge, is an important aspect that has to be a priority, without creating new divides when users take up new technologies.**
- (4) **Effective management of spectrum, is a condition for the industrial shift to 5G, which would put Europe at the centre of innovation and create a favourable environment for electronic communications networks and services to develop, which thus maximises the growth potential of the digital economy. The European Economy will increasingly have digital society at its core, which requires ubiquitous network coverage to develop services relating to the Internet of Things, E-Commerce, and European Cloud services, and to reap the full benefits of Industry 4.0 across Europe.**

³ Decision No 243/2012/EU of the European Parliament and of the Council of 14 March 2012 establishing a multiannual radio spectrum policy programme (OJ L 81, 21.3.2012, p. 7).

⁴ See http://ec.europa.eu/priorities/digital-single-market/index_en.htm.

- (5) *The 700 MHz frequency band represents an opportunity for globally harmonised and coordinated spectrum for mobile broadband offering economies of scale. That band should allow new innovative digital services to be developed in urban and in rural or remote areas, such as e-Health and mHealth, supported by mobile phones, patient monitoring devices and other wireless devices, as well as smart energy grids.*
- (6) *In its resolution of 19 January 2016 entitled Towards a Digital Single Market Act, the European Parliament reminds the Member States of their commitment to reach full deployment of at least minimum target speeds of 30 Mbps, highlights that radio spectrum is a critical resource which is essential for the future competitiveness of the Union, and calls as a priority for a harmonised and pro-competitive framework for spectrum allocation and for effective spectrum management.*
- (7) *Spectrum is a public good. It is, in the 470-790 MHz frequency band, a valuable asset for the cost-efficient deployment of wireless networks with universal indoor and outdoor coverage. This spectrum is currently used across the Union for digital terrestrial television (DTT) and wireless audio PMSE equipment. It is thus a prerequisite for access to and dissemination of cultural content and of information and ideas. It supports, in parallel to new forms of distribution, the development of the media, creative , cultural and research sectors, which extensively rely on this spectrum resource for the wireless provision of content to end users.*
- (8) *The assignment of the 700 MHz frequency band should be structured in a way that facilitates competition and should be carried out in a way that does not undermine existing competition.*
- (9) For Region 1, which includes the Union, the International Telecommunication Union's Radio Regulations adopted by the World Radiocommunication Conference *in 2015* have allocated the 700 MHz frequency band to the broadcasting and the mobile (except aeronautical mobile) service on a co-primary basis, and the 470-694 MHz ('sub-700 MHz') frequency band *remains* exclusively *allocated* to the broadcasting service, on a primary basis, and to wireless audio PMSE use, on a secondary basis.

- (10) Rapidly growing wireless broadband traffic ***and the increasing economic, industrial and social importance of the digital economy make*** enhanced wireless network capacity a necessity. Spectrum in the 700 MHz frequency band provides both additional capacity and universal coverage, in particular for the economically challenging rural, ***mountainous, insular and other*** remote areas, ***in pre-determined national priority areas, e.g. along major terrestrial transport routes and*** for indoor use and for wide-range machine-type communications. In this context, coherent ***and coordinated*** measures for high-quality terrestrial wireless coverage across the Union, which build on best national practice for operators' licence obligations, should aim to meet the RSPP objective that all citizens ***throughout the Union*** should have access to ***fastest*** broadband speeds of not less than 30 Mb/s by ***2020, both indoors and outdoors, as well as aiming to achieve an ambitious vision for gigabit societies in the Union.*** In this way, the measures will promote innovative digital services and ensure long-term socioeconomic benefits.
- (11) ***5G will have a major impact not only on the digital sector, but on economies as a whole. Especially against the backdrop of slow deployment of 4G and corresponding services, the successful launch of 5G in the Union will be crucial for economic development and for the competitiveness and productivity of the European economy. Europe therefore needs to take the lead by securing enough spectrum for a successful launch and development of 5G. In addition, when authorising the use of the 700 MHz frequency band, Member States could take due account of the opportunity to ensure that Mobile Virtual Network Operators have the opportunity to increase their geographical coverage. Where a Member State so requests, the Commission should facilitate, where feasible, the option of jointly organised auctions, thus contributing to pan-European structures.***

- (12) Spectrum sharing within a common frequency band between bidirectional wireless broadband *use for wide-area* use (uplink and downlink), on the one hand, and unidirectional television broadcasting or wireless audio PMSE use, on the other hand, is technically problematic *where their coverage areas overlap or are close*. This means that repurposing the 700 MHz frequency band for bidirectional terrestrial wireless broadband electronic communications services would deprive DTT and wireless audio PMSE users of part of their spectrum resources. The DTT and PMSE sectors therefore need long-term regulatory predictability on the availability of sufficient spectrum, so that they can safeguard the sustainable provision and development of their services, in particular free-to-view television, *while ensuring an appropriate environment for investments, and so that they can ensure that national and European audiovisual policy objectives such as social cohesion, media pluralism and cultural diversity are met*. Measures may be needed at national and Union level to ensure additional spectrum resource for wireless audio PMSE use outside the 470-790 MHz frequency band.
- (13) In his report to the Commission (the ‘Lamy report’) ⁵, Pascal Lamy, the Chairman of the high-level group on the future use of the 470-790 MHz frequency band, recommended that the 700 MHz frequency band be made available for wireless broadband by 2020 (+/- two years). This would help achieve the goal of long-term regulatory predictability for DTT in having access to the sub-700 MHz frequency band until 2030, although this would have to be reviewed by 2025. ■

⁵ Report by Mr Pascal Lamy, available at: <https://ec.europa.eu/digital-agenda/en/news/report-results-work-high-level-group-future-use-uhf-band>.

- (14) The Radio Spectrum Policy Group (RSPG) recommends in its opinion on a long-term strategy on the future use of the 470-790 MHz frequency band in the Union (the 'RSPG opinion') the adoption of a coordinated approach across the Union to make the 700 MHz frequency band available for effective use for wireless broadband electronic communications services by the end of 2020. ***Member States should, however, be able to decide on the basis of duly justified reasons to delay the availability of the band for up to two years. Such a coordinated approach*** would be in conjunction with ensuring long-term availability until 2030 of the sub-700 MHz frequency band for the ***provision of broadcasting services.***
- (15) ***Some*** Member States have already launched or completed a national process to authorise the use of the 700 MHz frequency band for bidirectional terrestrial wireless broadband electronic communications services ■ . What is needed is a coordinated approach to the future use of the ***700*** MHz frequency band, which should also provide regulatory predictability, balance Member State diversity with single market objectives and promote ***European leadership on international technology developments.*** In this context, Member States should be required to repurpose the 700 MHz frequency band in a timely manner in accordance with Union and national law.

- (16) *Member States should be able to delay, on the basis of duly justified reasons, the availability of the 700 MHz frequency band for terrestrial systems capable of providing wireless broadband electronic communications services beyond a common Union deadline of 2020 for up to two years. The reasons for delay should be limited to unresolved cross-border coordination issues resulting in harmful interferences, the need to ensure and the complexity of ensuring, technical migration of a large amount of the population to advanced broadcasting standards, the financial costs of transition exceeding the expected revenue generated by award procedures and force majeure. Member States should take all necessary steps to minimise resulting harmful interference in the affected Member States. In the event that a Member State decides to delay the availability of the band, it should inform other Member States and the Commission accordingly and include those duly justified reasons in its national roadmap. Such Member State and any affected Member State should also cooperate with a view to coordinating the process of releasing the 700 MHz frequency band and include information on such coordination in its national roadmap.*
- (17) The use of the 700 MHz frequency band by other applications in non-Union countries, as allowed by international agreements or in parts of national territory outside the effective control of the Member State authorities, may limit the band's use for terrestrial wireless broadband electronic communications services in some Member States. This would prevent them from complying with the common schedule set at Union level. Member States concerned should take all necessary steps to minimise the duration and geographical extent of these limitations and seek the assistance of the Union, where necessary, under Article 10(2) of the RSPP. They should also notify the Commission of such limitations pursuant to Articles 6(2) and 7, and the information should be published in accordance with Article 5, of Decision No 676/2002/EC⁶.

⁶ 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) (OJ L 108, 24.4.2002, p. 1).

- (18) The use of the 700 MHz frequency band for terrestrial wireless broadband electronic communications services should be subject to a flexible authorisation regime as soon as possible. This should include the possibility for holders of rights of use of spectrum to trade and lease their existing rights in the context of the application of Articles 9, 9a and 9b of Directive 2002/21/EC⁷, ***taking into account the obligation to promote effective competition without distortions in the internal market for electronic communications services under Article 5 of Decision No 243/2012/EU and noting that during their respective assessments when licensing spectrum, the Member States, in their full competence, should take into consideration the duration of licences, the business plan of the operators, and its contribution to meeting the Digital Agenda objectives, promoting innovative digital services and long term socio-economic benefits.***
- (19) ***It is important to achieve long-term regulatory predictability for DTT regarding access to the sub-700 MHz frequency band, taking into account the outcome of the World Radiocommunication Conference in 2015.*** In line with Articles 9 and 9a of Directive 2002/21/EC, Member States should apply a flexible approach where possible and may allow the introduction of alternative **■** uses such as terrestrial wireless broadband electronic communications services in the sub-700 MHz frequency band in accordance with national needs for distribution of ***broadcasting services including for innovative user-driven initiatives. Such scenarios should guarantee continued access to spectrum for broadcasting, as the primary user, subject to national demand. In this regard, Member States should promote cooperation between broadcasters, broadcasting operators and mobile operators in order to facilitate convergence of audiovisual and internet platforms and shared spectrum use.*** When allowing use within the sub-700 MHz frequency band for **■** terrestrial wireless broadband electronic communications services, Member States should ensure that such use does not ***cause harmful interference to*** digital terrestrial broadcasting in neighbouring Member States, as provided for in the agreement at the Regional Radiocommunication Conference of 2006[■].

⁷ Directive No 2002/21/EC of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L108, 24.4.2002, p.33).

- (20) ***The Commission should, in cooperation with the Member States, report to the Council and Parliament on developments in the use of the 470-694 MHz frequency band, with a view to ensuring efficient use of spectrum, pursuant to the applicable EU legislation. The Commission should take into account the social, economic, cultural and international aspects affecting the use of the band pursuant to Articles 1 and 4, further technological developments, changes in consumer behaviour but also the requirements in connectivity to foster growth and innovation in the Union.***
- (21) Member States should adopt coherent national roadmaps to facilitate the use of the 700 MHz frequency band for terrestrial wireless broadband electronic communications services while ensuring continuity for the television broadcasting services that vacate the band. Once adopted, Member States should communicate the roadmaps in a transparent manner around the Union. The roadmaps should cover activities and timescales for frequency re-planning, technical developments for network and end-user equipment, co-existence between radio and non-radio equipment, existing and new authorisation regimes, ***mechanisms to avoid harmful interference to spectrum users in adjacent bands*** and information on the possibility to offer compensation for migration costs, where these would arise, in order to avoid, inter alia, costs for end-users ***or broadcasters***. Where Member States intend to maintain DTT, the roadmaps should ***consider the option of*** facilitating upgrades of broadcasting equipment to more spectrum-efficient technologies such as advanced video formats (e.g. HEVC) or signal transmission technologies (e.g. DVB-T2).

- (22) The scope and mechanism of possible compensation for completing the transition in spectrum use **■**, *in particular for end users*, should be analysed in accordance with the relevant national provisions as provided by Article 14 of Directive 2002/20/EC⁸, and have to be consistent with the provisions of Articles 107 and 108 TFEU *in order to, for example, facilitate the transition in spectrum use to more spectrum efficient technologies. The Commission should be able to provide guidance to a Member State, on its request, to facilitate the transition in spectrum use.*
- (23) Since the objective of this Decision, namely to ensure *a* coordinated *approach to* spectrum use of the 470-790 MHz frequency band in the Union according to common objectives, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS DECISION:

⁸ 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) (OJ L 108, 24.04.2002, p. 21).

Article 1

1. By 30 June 2020, Member States shall allow the use of the 694-790 ("**700 MHz**") MHz frequency band for terrestrial systems capable of providing wireless broadband electronic communications services only under harmonised technical conditions set by the Commission pursuant to Article 4 of Decision 676/2002/EC. ***Member States may, however, delay the making available of the band for up to two years on the basis of one or more of the duly justified reasons set out in the Annex. Where a Member State does so, it shall inform other Member States and the Commission accordingly and shall include those duly justified reasons in its national roadmap adopted pursuant to Article 5.*** Where necessary, Member States shall carry out the authorisation process or amend relevant existing rights to use the spectrum in accordance with Directive 2002/20/EC, in order to allow that use.

Member States that delay the use of the 700 MHz frequency band under the first subparagraph and the affected Member States shall cooperate with a view to coordinating the process of releasing the band for wireless broadband electronic communications services and include information on such coordination in the national roadmaps adopted pursuant to Article 5.

2. In order to allow the use of the 694-790 MHz frequency band in accordance with paragraph 1, Member States shall by 31 December 2017 conclude all necessary cross-border frequency coordination agreements within the Union.
3. Member States shall not be bound by the obligations under paragraphs 1 and 2 in geographical areas where frequency coordination with non-Union countries remains unresolved, as long as Member States make all practicable efforts to minimise the duration and geographical scope of such unresolved coordination and annually report the results to the Commission until the outstanding coordination issues have been resolved. This paragraph shall also apply to the spectrum coordination problems in the Republic of Cyprus arising from the fact that the Government of Cyprus is prevented from exercising effective control in part of its territory.

4. ***This Decision is without prejudice to the right of Member States to organise and use their spectrum for the purposes of public order, public security and defence.***

Article 2

On the granting of the rights of use in the 700 MHz band for terrestrial systems capable of providing wireless broadband electronic communications services, Member States shall allow their transfer or leasing in accordance with open and transparent procedures pursuant to applicable EU legislation.

Article 3

1. When Member States authorise the use of **█** or amend existing rights to use the 700 MHz frequency band, they shall take ***due account of the need to achieve the target speed and quality objectives set out in Article 6(1) of the Radio Spectrum Policy Programme including coverage*** in pre-determined national priority areas where necessary, ***e.g.*** along major terrestrial transport paths ***for the purpose of allowing wireless applications and European leadership in new digital services to contribute effectively to Union economic growth***. Such measures may include conditions facilitating or encouraging sharing network infrastructure or spectrum in compliance with Union law.
2. ***In applying paragraph 1, Member States shall assess and, where appropriate, consult with relevant stakeholders on the need to attach conditions to the rights of use for frequencies within the 700 MHz frequency band.***

Article 4

Member States shall ensure availability ***at least until 2030*** of the 470-694 MHz frequency band for the terrestrial provision of ***broadcasting services***, including free television and for use by wireless audio PMSE equipment, based on national needs ***while taking into account the principle of technological neutrality***. Member States shall ensure that any other use of the 470-694 MHz frequency band on their territory ***is compatible with the national broadcasting needs in the relevant Member State and*** does not cause harmful interference ***to, nor claim protection from,*** the terrestrial provision of ***broadcasting*** services in a neighbouring Member State. ***Such use shall be without prejudice to obligations resulting from international agreements, such as cross-border frequency coordination agreements.***

Article 5

- As soon as possible and no later than 30 June 2018***, Member States shall adopt and make public their national plan and schedule ('national roadmap'), ***including detailed steps*** for fulfilling their obligations under Articles 1 and 4 of this Decision. ***They shall draw up those national roadmaps by consulting with all relevant stakeholders.***
- In order to ensure that the use of the ***700*** MHz frequency band is in accordance with paragraph 1 of Article 1, Member States shall include in their national roadmaps, where appropriate, information on measures, ***including any support measures***, to limit the impact of the forthcoming transition process on the public and users of wireless audio PMSE equipment and to facilitate the timely availability of interoperable television broadcasting network equipment and receivers in the internal market.

Article 6

1. *Member States may, where appropriate and in accordance with Union law, ensure that the direct cost, in particular for end-users, of migration or reallocation of spectrum use is compensated adequately, promptly, and in a transparent manner in order to, for example, facilitate the transition in spectrum use to more spectrum efficient technologies.*
2. *The Commission may provide guidance on such compensation to a Member State, on its request, in order to facilitate the transition in spectrum use.*

Article 7

The Commission shall, in cooperation with the Member States, report to the Council and Parliament on developments in the use of the 470-694 MHz frequency band, with a view to ensuring efficient use of spectrum, pursuant to the applicable EU legislation. The Commission shall take into account the social, economic, cultural and international aspects affecting the use of the band pursuant to Articles 1 and 4, further technological developments, changes in consumer behaviour but also the requirements in connectivity to foster growth and innovation in the Union.

Article 8

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

Article 9

This Decision is addressed to the Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President

ANNEX

Justified reasons for a delay in making available the 700 MHz frequency band for terrestrial systems capable of providing wireless broadband electronic communications services later than 30 June 2020 (Article 1(1))

Member States may delay making available the 700 MHz frequency band until 30 June 2022 on the basis of one or more of the following duly justified reasons:

- (a) unresolved cross-border coordination issues resulting in harmful interferences;*
- (b) the need to ensure, and the complexity of ensuring, technical migration of a large amount of the population to advanced broadcasting standards;*
- (c) the financial costs of transition exceeding the expected revenue generated by award procedures;*
- (d) force majeure.*