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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 - General approach

1. On 2 February 2016, the Commission adopted and transmitted to the Council and to the European Parliament the above-mentioned proposal which regulates the assignment by Member States of the use of the 694-790 MHz ("700 MHz") frequency band for wireless broadband services by 30 June 2020. This should facilitate the deployment of 5G foreseen from 2020. The lower part of the UHF band (470-694 MHz) would remain available for the terrestrial provision of broadcasting services, including free television, and for use of wireless audio programme making and special events (PMSE) equipment.
2. Following a consultation process with European stakeholders, the Commission developed a strategy for the Union on the long-term use of the UHF band. The strategy will promote the Digital Single Market and ensure efficient management of radio spectrum in the UHF band, reflecting its social, cultural and economic value.

3. In February 2016, the Working Party on Telecommunication and Information Society started the examination of the above proposal and also evaluated the Commission's impact assessment. Following the discussions held at various meetings of the Working Party, the Presidency amended the Commission proposal on several points in order to take account of the Member States' concerns. Recitals have also been adapted to the substantive provisions.
4. On 11 May 2016, the draft general approach was submitted to the Permanent Representatives Committee. During this Committee meeting, delegations reached an agreement on the text set out in the Annex, arguing for keeping the delicate balance of the Presidency compromise. For the time being, one delegation has put forward its abstention to the general approach and another delegation has introduced a parliamentary reservation.
5. The Commission supports reaching a general approach at the forthcoming Council meeting. However, it reserves its position on the proposal at this stage of the procedure.
6. The TTE (Telecom) Council is invited to adopt, at its meeting on 26 May 2016, a general approach on the proposal set out in the Annex.

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

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,

Whereas:

¹ OJ C , , p. .

² OJ C , , p. .

- (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).
- (1a) 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.
- (2) 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 and stresses the need for a coordinated release of that frequency band, while accommodating the specific needs of broadcasting services distribution.

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.

- (3) Spectrum in the 470-790 MHz frequency band is a valuable asset for the cost-efficient deployment of wireless networks with universal coverage. This spectrum is currently used across the Union for digital terrestrial television (DTT) and wireless audio PMSE equipment. It supports the development of the media, creative and cultural sectors, which extensively rely on this spectrum resource for the wireless provision of content to end users.

- (4) 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.

- (5) Rapidly growing wireless broadband traffic makes 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 and 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 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 should have access to broadband speeds of not less than 30 Mb/s by 2020. In this way, the measures will promote innovative digital services and ensure long-term socioeconomic benefits.

- (6) 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, and secure their investments. 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.
- (7) 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>.

- (8) 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 noting that Member States may decide for duly justified reasons to delay the availability of the band by up to two years. This would be in conjunction with ensuring long-term availability until 2030 of the sub-700 MHz frequency band for provision of broadcasting services. The RSPG recommends that Member States should have the flexibility to use the sub-700 MHz frequency band for wireless broadband electronic communications services "provided that such use is compatible with the broadcasting needs in the relevant Member State and does not create constraint on the operations of DTT in neighbouring countries".
- (9) 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.

- (9a) Member States unable to allow the use of the 694-790 MHz frequency band for terrestrial systems capable of providing wireless broadband electronic communications by 30 June 2020 should duly justify any delays. The reasons for delay could include, but are not limited to, unresolved cross-border coordination issues, unresolved harmful interferences, the need to ensure technical migration to advanced broadcasting standards in presence of large amount of population affected by the process, financial costs of the transition exceeding the expected revenue generated by award procedures or force majeure. Other Member States and the Commission should be duly informed thereof in the national roadmaps published pursuant to this Decision. Member States should take all necessary steps to minimise resulting interference in the neighbouring Member States.
- (10) 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).

- (11) 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.
- (12) 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 in accordance with national needs and with the primary allocation of that band to broadcasting services in the International Telecommunications Union's Radio Regulations. When allowing alternative use within the sub-700 MHz frequency band, 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 2006⁸.

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).

⁸ Regional Radiocommunication Conference of 2006 for planning of the digital terrestrial broadcasting service in parts of Regions 1 and 3, in the frequency bands 174-230 MHz and 470-862 MHz (RRC-06) in Geneva.

(13) *(deleted)*

(14) 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 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).

(15) The scope and mechanism of possible compensation for completing the transition in spectrum use should be analysed in accordance with the relevant national provisions as provided by Article 14 of Directive 2002/20/EC⁹, and have to be consistent with the provisions of Articles 107 and 108 TFEU.

⁹ 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)

(16) 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:

Article 1

- (1) By 30 June 2020, Member States shall allow the use of the 694-790 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 decide, for duly justified reasons, to delay the availability of the band by up to two years. Where Member States decide to delay the availability of the band, they shall inform other Member States and the Commission in the national roadmap provided for in 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.

- (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.

- (3a) 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 694-790 MHz band for terrestrial systems capable of providing wireless broadband electronic communications services, Member States shall allow their transfer or leasing.

Article 3

When Member States authorise the use of the 694-790 MHz frequency band or amend existing rights to use the 694-790 MHz frequency band, they shall take due account of the opportunity to increase the level and quality of services and coverage of their population and territory through services deployed in the band. This may include measures aimed at services in pre-determined national priority areas where necessary, e.g. along major terrestrial transport routes. Such measures may include conditions facilitating or encouraging sharing network infrastructure or spectrum in compliance with Union law.

To that end, 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 694-790 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. 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

By 30 June 2018, Member States shall adopt and make public their national plan and schedule ('national roadmap') for fulfilling their obligations under Articles 1 and 4 of this Decision.

In order to ensure that the use of the 694-790 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 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 5(a)

Member States may, where appropriate and in conformity with Union law, ensure that the direct cost of migration or reallocation of spectrum usage is adequately compensated in accordance with national law.

Article 6 (deleted)

Article 7

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

Article 8

This Decision is addressed to the Member States.

Done at Brussels,

For the European Parliament

For the Council

The President

The President
