

DIRECTIVES

DIRECTIVE 2009/114/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 September 2009

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

(Text with EEA relevance)

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 Committee ⁽¹⁾,

Having consulted the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

(1) Council Directive 87/372/EEC ⁽³⁾, 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 ⁽⁴⁾ 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) ⁽⁵⁾, recognised the need to use the resources offered by modern telecommunications networks to the full, in particular mobile radio, in the interests of the economic development of the Community. The unique opportunity offered by the move to the second generation cellular digital mobile communications system in order to establish truly pan-European mobile communications has also been recognised.

(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 than before. The 900 MHz band has good propagation characteristics, covering greater distances than higher frequency bands and allowing modern voice, data and multimedia services to be extended to less populated and rural areas.

(4) In order to contribute to the objectives of the internal market and of the Commission Communication of 1 June 2005 entitled 'i2010 initiative — A European Information Society for growth and employment', while maintaining the availability of GSM for users throughout Europe, 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 and advanced pan-European services that would coexist with GSM.

⁽¹⁾ Opinion of 25 February 2009 (not yet published in the Official Journal).

⁽²⁾ Opinion of the European Parliament of 6 May 2009 (not yet published in the Official Journal) and Council Decision of 27 July 2009.

⁽³⁾ OJ L 196, 17.7.1987, p. 85.

⁽⁴⁾ OJ L 196, 17.7.1987, p. 81.

⁽⁵⁾ OJ C 329, 31.12.1990, p. 25.

- (5) 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. It should be examined together with other issues concerning 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) ⁽¹⁾. 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) established by Commission Decision 2002/622/EC ⁽²⁾.
- (6) The liberalisation of the use of the 900 MHz 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.
- (7) Within six months of the entry into force of this Directive, Member States should transpose Directive 87/372/EEC as amended. 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 Directive 2002/20/EC once the 900 MHz 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.
- (8) Any 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.
- (9) In order for other systems 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.
- (10) 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) ⁽⁴⁾ allows the Commission to adopt technical implementing measures to ensure harmonised conditions for the availability and efficient use of radio spectrum.
- (11) As requested by the Commission, the European Conference of Postal and Telecommunications Administrations (CEPT) has produced technical reports demonstrating that UMTS systems (Universal Mobile Telecommunications System) could coexist with GSM systems in the 900 MHz band. The 900 MHz band should therefore be opened to UMTS, a system that can coexist with GSM systems, as well as to other systems as soon as it can be demonstrated that they can coexist with GSM systems in accordance with the procedure laid down 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.
- (12) 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 fulfil Community policy objectives in this sector, should be taken into account. CEPT has produced technical advice in this respect.
- (13) 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 those systems can coexist with GSM systems.

⁽¹⁾ OJ L 108, 24.4.2002, p. 33.

⁽²⁾ OJ L 198, 27.7.2002, p. 49.

⁽³⁾ OJ L 108, 24.4.2002, p. 21.

⁽⁴⁾ OJ L 108, 24.4.2002, p. 1.

- (14) 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 and the exclusive reservation of this band for GSM should be removed,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 87/372/EEC

Directive 87/372/EEC is hereby amended as follows:

1. Article 1 shall be replaced by the following:

'Article 1

1. Member States shall make the 880-915 MHz and 925-960 MHz frequency bands (the 900 MHz band) available for GSM and UMTS systems, as well as for other terrestrial systems capable of providing electronic communications services that can coexist with GSM systems, in accordance with technical implementing measures adopted pursuant 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) (*);

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 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, 24.4.2002, p. 1.

(**) OJ L 108, 24.4.2002, p. 21.;

2. Article 2 shall be 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 shall be 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 by 9 May 2010. They shall forthwith communicate to the Commission the text of those measures and a correlation table between those measures and this Directive.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States;

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 shall be deleted.

Article 2

Entry into force

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

Article 3

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 16 September 2009.

For the European Parliament
The President
J. BUZEK

For the Council
The President
C. MALMSTRÖM